Supreme Court U. S.

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APPENDIX
Volume II – Pages 261-534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,

Appellant,

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT FILED AUGUST 29, 1974

JURISDICTION NOTED DECEMBER 16, 1974

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I. Transcript of Testimony from *Holt v. City of Richmond et al.*, 334 F.Supp. 228 (E.D. Va. 1971), (*Holt I*).

A. Transcript from trial beginning September 20, 1971.

1. Testimony of William S. Thornton:

* * *

[9] *WILLIAM THORNTON*, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Dr. Thornton, would you state your full name, age, address, please, sir.

A I am William S. Thornton. I am a podiatrist. I live at 2602 Brook Road.

Q Have you lived in Richmond long, Dr. Thornton?

A Except for my time in the service and the time away in school I lived in Richmond all my life.

Q Your age, sir?

A I am fifty years old.

Q Dr. Thornton, have you been politically active in the City of Richmond?

A Since 1956 I have been politically active, yes.

Q In what way have you been active, sir?

A In 1956 the Crusade for Voters was formed. I served as the first Chairman and the first President of that organization. Prior to that time there had been a committee in the City of Richmond to close public schools and the Crusade for Voters was formed as an outgrowth of that particular committee. At that time we found that [10] there were very few blacks

participating in political activities and that fewer than 4,000 voted in that particular referendum on January 9, 1956, so a group of us decided to found the Crusade for Voters. This was formed in 1956.

We decided the Crusade for Voters should be a non-political organization, non-partisan, and should not be affiliated with the Republican nor with the Democratic Party and that we would not field political candidates but would recommend to the voters the candidates that would benefit black people the most and who were the lesser of the evils for us. The candidates of course did not necessarily have to be black. It could be black or white as long as they were somewhat willing to uphold the Constitution of the United States and would give freedom to all black people regardless of race and creed.

Q Was the Crusade formed by a mixed group racially, or was it a black group?

A It was a black group that formed the Crusade for Voters.

Q Its orientation, sir, from 1956 until the present time, is it a black organization or a white organization?

A There are some white members of the Crusade for Voters, but it is a black organization mainly [11] and the leadership has always been vested in black people.

Q What office have you held in the Crusade since its inception in 1956?

A From 1956 until the present time, until this year, early in the year, when I resigned as a Chairman of the Board, I have been Chairman of the Board throughout those years. The first four years of the

Crusade for Voters I was also the President of that organization.

So I have served as President and as Chairman of the Board of the Crusade for Voters.

Q Dr. Thornton, could you give us a little more definition of just how the Crusade has operated in its time of existence? From 1956, what has the growth of the Crusade been both in its activities and its effect?

A Well, from 1956 until 1960 we were primarily interested in an educational job for the voters of the City of Richmond. We were educating them on the proper way to fill in a ballot, the proper way to fold a ballot, and just when to vote. We tried to educate them on issues arising during that time. So from 1956 until 1960 it was primarily a job of educating the public on what the Crusade was. We did this by organizing precinct clubs. We tried to organize precinct clubs into predominantly black precincts in the City of Richmond. These precinct clubs would in turn send two representatives to the Crusade for [12] Voters because in the Crusade for Voters we do not and we never have had a membership list that we have a mailing list for, but not a membership list. There are no dues or other requirements to be a member, to be on our mailing list.

Q Does the Crusade field the candidates, Dr. Thornton?

A We have never in the years that I was Chairman or President, we have never asked anybody to run for public office. We do not field candidates. We wait until the candidates are fielded, and then we recommend those candidates that we feel are the lesser of the evils to the voters.

Q Dr. Thornton, if I can take you back just a little bit, back to 1956, can you catalog for the Court the ability of the black citizens of the City of Richmond to participate in the political process. What have the changes been through the years up to date, and how the Crusade has worked with the black voter.

A In 1956 when the Crusade was formed there were many impediments placed in the way of a person who wanted to register to vote. We had a poll tax at that particular time that a person had to pay and had to pay for three years back in order to register. There were many impediments that were placed in the way of this particular [13] person because once he paid his poll tax he was assessed for other taxes in the City that he probably had not paid like personal property taxes and I personally know of persons who once they went down to register and to pay their poll taxes, they soon got a bill for $30.00 or $40.00 for personal property tax they had not been paying prior to this time.

* * *

Q Dr. Thornton, what was the need of the Crusade in Richmond?

A In 1956 we found there were less than 4,000 persons qualified to vote in the City of Richmond, and we wanted to introduce this so that black people could have some part of the political process in the City.

THE COURT: Excuse me, Doctor. You mean less than 4,000 –

A Black voters in the City of Richmond. So [14] that black people could have some voice in the politics of the City. There were no black people or very few black people on City committees. There were no

directorships of any City utility or service, and we felt that if we got into the mainstream of the political activity that we could at least give some of these people assignments on committees, probably directorships and additional jobs in the City.

Q How effective has the Crusade been? How are you doing now?

A According to the Registrar we have increased from 1956, from 4,000 voters, we have now over 35,000 black voters in the City of Richmond.

Q Dr. Thornton, I hand you a book that encompasses plaintiff's exhibits 1, 2, 3a, through plaintiff's exhibit 4.

* * *

MR. VENABLE: [15] Your Honor, the map I am referring to is plaintiff's exhibit 1 basically showing the City divided into voter precincts and in the Court's copy you will see four maps which correspond to the four overlays beginning with 1940 and taking every ten years, 1950, 1960 and actually 1971.

BY MR. VENABLE: Continued

Q Dr. Thornton, you have a copy in your hands. Have you had an opportunity to study this map?

A Yes, I have.

Q In your experience in working with voting patters and racial patters, housing in the City of Richmond, do you consider that map to be accurate, sir?

A I consider all of the maps to be accurate except in 1971 I think in Precinct 25 that it is a mixed

precinct probably with fifty percent white and fifty percent [16] black voters in that particular precinct.

Q Precinct 25, it is shown on the map as what, sir?

A As a white precinct.

Q If I can bring your attention back for a moment, Dr. Thornton, you were talking about the impediments which black citizens have had in participating in the political process. You talked about some of the formal impediments, poll taxes and so on. What informal impediments have black citizens in the City of Richmond faced as they seek or sought to enter into the political process of the City of Richmond?

MR. OTT: I object to the form of the question, if Your Honor please.

THE COURT: Overruled. Go ahead.

A I think some of the informal impediments would be for one thing moving the office of the Registrar up to the Mosque, from the City Hall itself. I don't remember exactly when it was moved, but certainly this was an informal impediment, that had a person who paid his poll taxes at the City Hall and would have to travel all the way to the Mosque to become registered. I think this was one of the informal impediments.

I think by not having any black people working in these offices were also impediments to black [17] voters in the City of Richmond because just not seeing a black friendly face in the registrar's office or in the tax collector's office certainly was an impediment to black people to register and vote.

Other things that caused black people to register and vote, there are some people on welfare, and the word was spread that if those persons registered to vote they –

* * *

[18] BY MR. VENABLE: Continued

Q Dr. Thornton, was it your understanding these remarks about which you were to testify a few mements ago, was it your understanding these remarks emanated from the City of Richmond, officials of the city?

A Yes. I had this impression that they did [19] emanate from City officials.

Q What were those remarks, sir?

A That if he registered to vote he would be taken off welfare.

Q Continue with your testimony, Dr. Thornton, about any other informal impediments which were placed on Negro participation in the political process.

A Certainly black people did not realize any benefits from voting. There were no black people on commissions or boards. There were no black elected officials in the City of Richmond since 1948 when Mr. Oliver Hill served on City Council. So they felt their vote was wasted, and I think this was an informal impediment, that they were not rewarded for their vote, as such.

Q In 1948, you said Mr. Oliver Hill was elected. He was a Negro?

A That is right.

Q Was he elected under the old ward system or under an at-large system?

A Mr. Hill was elected under the first City Manager type of government we had in the City of Richmond. This was just after the ward system in the City.

Q When was the form of city government and the electoral process changed?

A In 1948 it was the first election for [20] that.

Q It was the first election that followed it?

A Yes.

Q In the old ward system was there a predominately black ward?

A There was one predominately black ward known as Jackson Ward in the central section of the City of Richmond.

Q Are you familiar with the percentage of blacks living in Jackson Ward just prior to the changing from the ward system to an at-large system, sir?

A From what I have read it was close to ninety percent at that particular time.

Q Dr. Thornton, you have talked about the first four years of the Crusade being educational, from 1956 to 1960.

Let me ask you: Did the thrust of the Crusade change from 1960 on, from being educational to something else?

A I think that we changed in the Crusade after we realized that in order for people to register to vote, in order for people to take part in the political process, then we had to recommend candidates and become more active politically. We started in 1960 to actually [21] participate in all elections.

Q When was the poll tax removed as a burden to the black registration, sir?

A The first election for nonpoll tax payment was the Presidential election of 1964.

Q When was the first councilmatic election that was not under the poll tax?

A In 1966.

Q Doctor, if you will take the exhibits -- You notice plaintiff exhibit 2 sets out the census tabulations from 1930 through 1970.

What was the white-black ratio in the City of Richmond, sir, in 1940?

A In 1940, according to these exhibits and according to the census figures, there was sixty-eight percent white persons in the City and thirty-two percent nonwhite.

Q In 1950, sir?

A In 1950 the percentage was the same, sixty-eight percent white and thirty-two percent nonwhite.

Q Had the City expanded the boundary areas between 1940 and 1950, sir?

A We had annexation in 1942.

Q What is the racial percentage in 1960?

A In 1960, fifty-eight percent of the [22] population was white and forty-two percent was black.

Q At what point between 1960 and 1970 did the Negro population match that of the white population in the City of Richmond?

A In 1968 the population was fifty percent black and fifty percent white, in 1968.

Q If annexation of Chesterfield County had not occurred, sir, in 1970, January 1, what would have been the ratio of black and white in the City of Richmond in 1970?

A In 1970 without annexation, fifty-two percent of the population would have been black and forty-eight percent would have been white.

Q In actuality annexation occurred January 1, 1970. What was the percentage of whites-black in the City with annexation?

A The percentage in 1970 was the same as it was in 1960, fifty-eight percent white and forty-two percent black.

Q The percentage in 1950 was the same as the percentage in 1940. Is that correct?

A That is correct.

Q Between 1940 and 1960 and 1970, in those two spans, annexation occurred, did it not?

A That is right.

Q [23] What was the percentage of black citizens actually annexed by the annexation in 1970?

A 1.2 percent.

Q What is the exact figure of people?

A The total number of people, 47,262 persons were annexed.

Q How many of those were black?

A 555.

Q Calling your attention now to plaintiff's exhibit 3, a through m, the councilmatic tabulations for election, 1960, 1962, 1964, 1966, 1968 and 1970 – Have you had an opportunity to review these tabulations, sir?

A Yes, I have.

Q Do you find them to be accurate and correct?

A For the most part. There were one or two corrections I had.

Q When we get to them you can point them out to the Court.

Dr. Thornton, what has been the success of the Crusade at the time it changed its posture from one of education to political education, from 1960 to date?

A In the first councilmatic election of June, 1960, June 14, there were only white persons running in that

particular election, and those persons who were [24] endorsed or recommended by the Crusade for Voters, they all were elected to public office.

At that particular time there was the Richmond Citizens Association and they had seven of the nine candidates that the Crusade also recommended along with them. There were two independent candidates running that the Crusade also endorsed, Mr. Throckmorton and Mr. Garber.

Q May I stop you. Why would you recommend an R.C.A. candidate, sir?

A We recommend candidates because we feel that they would be favorable to black people in the city, and they just happened to have been the lesser of the evils.

Q Continue, sir.

A In 1962 the Crusade with two black candidates running, the Crusade was able to also recommend some candidates with R.C.A. and five of the candidates that were recommended by both the Crusade and R.C.A. were elected and one or two – two candidates with Crusade support only were elected. They were Mr. Heverly who led the ticket and Mrs. Herrick. Two of the Crusade candidates lost in 1962, who were black candidates, Clarence Newsome, getting 35.5 percent of the vote. In 1964 with R.F. in existence at that particular time –

Q R.F.?

A Richmond Forward, the R.C.A. had changed [25] its name to Richmond Forward, and this was a new organization that was being formed. They had asked Mr. Cephus, a black man, to run for City Council. The Crusade endorsed Mr. Cephus and also

Richmond Forward endorsed Mr. Cephus. We had two other black candidates running that the Crusade for Voters did not recommend, Mr. Eggleston and Mr. Charity, and Mr. Cephus became the first black Councilman since Oliver Hill in 1948.

Mr. Cephus was elected in 1964. The councilmatic election of 1966, five of the six candidates that the Crusade recommended were elected to public office, and at that particular time they had three black members of City Council, Mr. Cephus, Mr. Mundill and Mr. Henry Marsh. The three black candidates who chose to run were elected in 1966.

Q In the 1966 election was the poll tax on at that particular time?

A There was no poll tax in 1966.

Q This was the first time without it?

A The first election without poll tax.

Q How did the Crusade do in the black precincts in 1966? Before I forget – Is the Richmond Citizens Association or Richmond Forward at this time – Is that a white or black political organization, sir?

A I would consider it to be a white [26] political organization.

Q In reference to the black precincts in the 1966 elections, how did the Crusade do with its candidates as opposed to Richmond Forward's candidates?

A In the 1966 election, in the black precincts, predominately black, Mr. Henry Marsh, who was recommended by the Crusade, got 83.4 percent of the black vote. Mr. Cephus who was recommended by Richmond Forward and the Crusade got 77.2 percent.

Mr. Mundill who was recommended by Richmond Forward and the Crusade received 69 percent. Mr. Carwile who was recommended by the Crusade received 62.5 percent, and Mr. Bagley, who was recommended by both R.F. and the Crusade, received 54.1 percent. Mrs. Sheppard who was not recommended by the Crusade but was recommended by Richmond Forward received 42.1 percent.

Mr. House who was recommended only by the Crusade received 33.9 percent. Mr. Cubbie, an independent, received 33.6 percent.

Mr. Crowe who was recommended by Richmond Forward received 33.2 percent.

Q How many members are there on Council, sir?

A Nine members.

Q In the top nine slots in the black precincts, the rankings, how did you compare?

A [27] Five of the Crusade recommended candidates were in the first nine in the black precincts.

Q You are familiar with city government and how it works?

A Yes, I am.

Q How many members of City Council does it take to have effective control of Council on money matters?

* * *

A I think in appropriations, to be effective in appropriations, there is a need for six votes on the budget, on the appropriations.

Q Six votes?

A Yes, sir, to be effective.

Q Take a look at the split precincts in 1966, the mixed precincts.

Just dealing with the rankings in the first nine slots, how did your Crusade perform?

A Of the nine candidates the first nine, percentage wise, the Crusade had six candidates in the running.

Q In 1968, Dr. Thornton, were Mr. Mundill and Mr. Cephus running for office?

A In 1968 Mr. Mundill and Mr. Cephus did [28] run for office, yes.

Q What was their endorsement?

A Richmond Forward.

Q Did the Crusade endorse them?

A No. They did not in 1968.

Q Why?

A They were actually candidates of Richmond Forward, as such. At that particular time we thought that other candidates that we could recommend would be the better candidates for black people in the City of Richmond.

Q Turning to the black precincts tabulations in the 1968 councilmatic election, how did the Crusade perform?

A In 1968 in the black precincts Mr. Marsh recommended by the Crusade received 91 percent of the vote. Mr. Carwile, recommended by the Crusade, received 88.9. Mr. Carpenter, endorsed by the Crusade, received 85 percent.

Mr. Walter Kenney received 73.3 percent. Mr. Melton Randolph recommended by the Crusade received 65.8 percent. Mr. Cephus who was recommended by Richmond Forward received 23.4 percent. Mr. Mundill recommended by R.F. received 19.9. Mr. Bagley, by R.F., received 16.3 percent. Mr. Crowe received 15.5.

Q Out of the top nine how about the black votes in 1968?

A [29] In the black precincts the Crusade carried the first five candidates in all the black precincts.

Q Turn to the mixed precincts in 1969.

THE COURT: Mr. Venable, I want to be sure I am not misreading this. The last question was based on what? You may approach the witness.

MR. VENABLE: It is based on PX 31.

THE COURT: Did I understand you to say, Dr. Thornton, that the Crusade endorsed the first five? That is, by precinct?

A Yes, Your Honor. This is one of the mistakes I had mentioned in the book. We did recommend Dr. Carpenter at that time and the exhibit shows Mr. Carpenter was endorsed as a candidate but the Crusade did recommend Mr. Carpenter.

THE COURT: When you come across one of those would you let me know.

A All right.

* * *

Q Dr. Thornton, turning your attention to the mixed precincts in the 1968 election, plaintiff's [30] exhibit 3H, Your Honor –

A In the mixed precincts Mr. Carwile recommended by the Crusade received 66 percent of the vote. Mr. Carpenter who was recommended by the Crusade, and this is a change, Your Honor, to 57.5 and the sheet has independent, but he was recommended by the Crusade.

Mr. Marsh, recommended by the Crusade, received 55.4. Mr. Bagley, R.F., received 47.7 percent.

Q You had recommended Mr. Bagley in 1966?

A That is right.

Q Continue.

A Mr. Bliley received 46 percent of the vote, being recommended by Richmond Forward. Mr. Kenney recommended by the Crusade received 43.3. Mr. Crowe, R.F., 42.2. Mr. Forbe, R.F., received 40.6. Melton Randolph, endorsed by the Crusade, received 39.9.

Q Out of the top nine how many Crusade candidates were placed in the top nine in the mixed precincts of 1968?

A Five.

Q How many total did you recommend that year?

A Only five we recommended.

Q Where did Mr. Cephus and Mr. Mundill stand in the mixed precincts? What ranking?

A [31] Mr. Cephus ranked thirteen. Mr. Mundill ranked fourteen in the mixed precincts.

Q If I can take your attention back to plaintiff's exhibit 3S, how many Crusade candidates did you recommend in the 1966 election, sir?

A There were six.

Q Were there cross recommendations?

A Yes. Mr. Cephus received recommendations from Richmond Forward and from the Crusade, Mr. Mundill and Mr. Bagley.

Q Would you look at plaintiff's exhibit 3D which is the total results for 1966.

How many Crusade only, candidates that were endorsed only by the Crusade, made it in the top nine of 1966?

A There were two, Mr. Marsh and Mr. Carwile.

Q If you would look at plaintiff's exhibit 3G, which is the total result for 1968 – during which time you have dropped Mr. Bagley and Mr. Mundill and Mr. Cephus. How many Crusade candidates were elected?

A There were three, Carwile, Carpenter, Mr. Marsh.

THE COURT: That is another error?

A There is another error. Mr. Carpenter.

MR. VENABLE: He is listed as independent [32] and he should be Crusade?

A Yes.

BY MR. VENABLE: Continued

Q Calling your attention, Dr. Thornton, to plaintiff's exhibit 3M, the 1970 old city black precincts, the total vote from the old city, how many Crusade candidates had you endorsed in 1970?

A The Crusade endorsed nine candidates. The exhibit will show Mr. Shiro was an independent, but he was also endorsed by the Crusade.

Q In the black precincts in the City of Richmond, the old city, without annexation, in 1970, how did the Crusade fair in ranking?

A All nine of the candidates that the Crusade recommended came from the top ten.

Q What positions did those recommended by T.O.P. achieve in the black precincts of the old city in 1970, that is the Team of Progress?

A Mr. Bliley was the tenth person, and he was recommended by T.O.P. Mr. Levinston was nine. He received 44.6 of the vote. In tenth place, Mr. Bliley dropped to 15.3 percent of the vote.

Q The other T.O.P. candidates for this year, what rankings did they achieve in the black precincts?

A [33] Fourteen. Mr. Daniel is fourteen. Mr. Rennie, seventeen. Mr. Valentine, eighteen. Mr. Morris, nineteen. Thompson, twenty. Orendorff, twenty-one.

Q Take a look at plaintiff's exhibit 3L which shows the mixed precincts of the old city in the June, 1970 election.

A In the old city, June 10, 1970, it shows Mr. Carwile who had Crusade endorsement received 62.9 and was ranked first.

Q Give the rankings, Dr. Thornton, one through nine.

A Eight of the nine candidates recommended by the Crusade were in the first nine with Mrs. Jaquelin Taylor in eighth place.

Q Was Mrs. Taylor –

A She was not recommended. She was an independent.

THE COURT: Was Mr. Shiro?

A Mr. Shiro was recommended by the Crusade.

THE COURT: There is another error?

A Yes.

BY MR. VENABLE: Continued

Q Sir, take a look at plaintiff's exhibit 3N which shows the white precincts in the old city in the [34] June, 1971 election.

A The T.O.P. candidates took the first eight places. The ninth place went to Mr. Carpenter recommended by the Crusade.

Q Mr. Carpenter's race?

A Mr. Carpenter is white.

Q Take a look at the plaintiff's exhibit K which shows the total vote results without the annexed area.

How many Crusade candidates would have been elected but for the annexed area vote?

A There would have been four Crusade endorsed candidates elected in 1970 in the old city.

Q Leaving how many for T.O.P.?

A Leaving the balance of five T.O.P.

Q Take a look at plaintiff's exhibit J, 4, which is the election results of the councilmatic election of 1970 with annexation.

How many candidates did the Crusade actually place on City Council?

A The Crusade recommended and placed on City Council three candidates, Carwile, Marsh and Carpenter.

Q Under the old city without the annexed vote, who was the fourth individual who was not placed on City Council?

A Walter Kenney.

Q [35] His race?

A He is a black man.

Q Dr. Thornton, are you familiar with the events surrounding an attempted merger between the County of Henrico and the City of Richmond in December, 1961 when the vote was taken?

A Yes, I am.

Q Would you look at plaintiff's exhibit 4. Plaintiff's exhibit 4 is a tabulation of the vote by precincts in the City of Richmond in 1961. What percentage of the black precincts voted against merger?

A One hundred percent of the black vote voted against merger in 1961.

Q What percentage of the mixed precincts voted against merger?

A Sixty-two percent of the mixed precincts.

Q What percentage of the white precincts voted for merger?

A Ninety-five point seven percent of the vote was yes.

Q Dr. Thornton, from 1964 to 1966, the poll tax was dropped for city elections. Correct, sir?

A That is right.

Q Did the Crusade note any increase in its effectiveness from that date forward?

A [36] Yes, the Crusade did notice an increase in its effectiveness because more black people were voting in those elections, and it was easier to register to become qualified. In 1964 we had in the Crusade the greatest increase in black voters in the City of Richmond, when we were able to register 11,000 persons because of area registration and because of night hours the registrar held for the first time.

Q Was there a steady increase in voting strength and participation by already registered Negro voters from 1966 forward?

A There was a greater political awareness on the part of the black people because at that time we had some blacks elected to City Council, and I think they could see the result of their vote.

* * *

Q [37] Dr. Thornton, how many people ran in 1970?

A There were twenty candidates in 1970.

Q How many ran from the annexed area?

A I can see at least seven down this list I think that ran in 1970.

Q Your mention of four then was based on just a mere subtraction of the annexed area. Is that correct?

A Of the actual vote at that particular time when four of the persons would have been elected, who were recommended by the Crusade. Of course, had not the area been annexed one of the men who won, Mr. Thompson –

* * *

[38] Go ahead.

A Mr. Thompson, who lives in the annexed area, could not have been a candidate in 1970, and therefore we would have had probably another person elected in his place.

Q Dr. Thornton, let us take another question, another line here for a moment: From 1956 to present, what has your position been in the Crusade?

A Until the first of this year I was the Chairman of the Board continuously from 1956 to the present time.

Q Have you or any other elected officials, to your knowledge, ever been approached by any member of the city government from –

THE COURT: I am sorry. I did not hear.

Q Have you or any elected officials, any officials of the Crusade for Voters, ever been approached by the members of the city government of the City of Richmond to participate in committees or assignments within the governmental structure?

A I do not know of any person who is in an official capacity of the Crusade who has ever been [39] approached to serve on any committee for the City. I am including myself in this particular grouping here.

BY THE COURT:

Q How many persons do you have, Doctor?

A We have President, Vice President, Secretary, Treasurer, Chaplin, Research Committee, and various

other standing committees. None of these have been officially approached to serve on any committee.

BY MR. VENABLE: Continued

Q Have they in fact served on any committee?

A None have. As a matter of fact when Mr. Crowe was Mayor, Mr. George Purnell was President of the Crusade for Voters. Mr. Purnell and I went to see Mayor Crowe about various appointments. He asked us to give him the names of black people that we thought could serve on various committees in the city. Mr. Purnell and I gave Mr. Crowe, we sent Mr. Crowe a list of twenty-five persons that we thought could serve ably on committees and boards, and it is my belief that Mr. Crowe used this to exclude persons because none of those twenty-five were ever put on any boards or committees of the City of Richmond.

Q Dr. Thornton, I show you a plaintiff exhibit, number 29. Can you identify it for the Court, [40] please.

A (Viewing paper writing). This is a letter that was sent out on January 1, 1968, by the Crusade for Voters, to the members of the Richmond delegation to the General Assembly at the State Capitol in Richmond.

Q I call your attention to two points to which the Crusade addressed itself. Something about a bond issue and something about annexation. Would you read those into the record, with the numbers.

A Number eight, is, we oppose the amendment of Section 702 of the City Charter in order to permit the sale of bonds to cover annexation costs.

Q What is nine?

A We favor asking the General Assembly to endorse a moratorium on the annexation of Chesterfield County and Richmond.

* * *

Mr. Venable?

MR. VENABLE: Yes, sir.

THE COURT: We will take a brief recess.

NOTE: A brief recess is taken, after which the testimony is resumed as follows:

[41] BY MR. VENABLE: Continued

Q Dr. Thornton, when we took a recess, we were talking about plaintiff's exhibit 29 which was a letter.

MR. VENABLE: Your Honor, for your edification, we can pass it to you.

THE COURT: All right.

NOTE: A paper writing is handed to the Court.

THE COURT: Is this the original?

MR. VENABLE: That is the only copy we have, Your Honor.

THE COURT: It is the original exhibit?

MR. VENABLE: Yes, sir.

BY MR. VENABLE: Continued

Q The two recommendations that I referred to are what numbers?

A Eight and nine.

Q Dr. Thornton, what was the Crusade's official position? Why were you against that change which would have allowed general obligation bonds to pay for annexation?

A [42] The Crusade was against annexation. Therefore, we were against a sale of bonds to cover this annexation because we were against annexation of this particular area at that time.

Q This was a City Charter change?

A That is right.

Q In your ninth recommendation you asked for what?

A A moratorium on the annexation of Chesterfield County and Richmond. We asked the General Assembly to do this.

Q Why were you against annexation? Why were you for a moratorium on annexation?

A We were against annexation because it would dilute the black vote in the City of Richmond. We were against any dilution of the black vote in the City of Richmond just when we were beginning to gain some political power through the vote in the City of Richmond, and the black vote had increased from 1956 when the Crusade was organized until this 1968 when this letter was written.

We felt that it would just dilute the black vote by annexation of parts of Chesterfield County.

Q Despite the enormous gains by 1968 by the Crusade and its candidates, how did the blacks themselves fare in the overall political picture in the City of [43] Richmond? Their vote increased. Did they increase in their participation in the City of Richmond after 1968?

A After 1968 we still had, as far as I know, no directors of any bureaus in the City of Richmond. I am thinking about things like school administration or personnel department, fire department, police department, no black people who actually could employ black people or persons who were qualified for the jobs. We had some committee appointments by 1968, but most of these were token appointments. They were in such

few numbers they could not influence the outcome of any vote.

Q You had how many members on Council in 1968, sir?

A There were nine members on City Council.

Q How many did the Crusade have?

A In 1968 there were three Crusade endorsed candidates on City Council: Carwile, Carpenter and Mr. Marsh.

Q Despite the growing Negro vote of strength, Dr. Thornton, as of 1968 you still were not effectively participating in the city government itself. Is that what you are saying?

* * *

A Because there were only three Crusade [44] endorsed candidates the City Council could still control the city government with R.F. endorsed candidates at that particular time. We were not getting the benefit of our vote in 1968, but we were a growing power. The population of the City of Richmond had increased greatly with black people. The voting strength had increased with black people and according to your maps there, Mr. Venable –

Q You can start with the first one.

* * *

Q This is overlay, plaintiff's exhibit 1 overlay, 1940.

THE COURT: All right.

A In 1940, only five precincts were predominately black. They were 1, 4, 5, 6, 7 and 45 and by 1971 –

Q Take them one at a time, Dr. Thornton.

A In 1950 –

Q Overlay 1950, plaintiff's exhibit 1.

A We had added also precincts 64, 18 and 19 to a predominately black precinct in the City of [45] Richmond.

Q This is overlay, plaintiff's exhibit 1, 1960.

A This had grown to include most of the East End precincts, 62, 63, 64, 65, 66, 67, 1, 4, 46, 47, 24, 18 and 19.

Also, we had a number of split precincts at that particular time, 68, 6, 7, 3, 25 and 45, 54, 55 and 51.

Q This is overlay 1971.

A By 1971 most of the precincts in the East End were predominately black. Sixty-two, 63, 64, 65, 66, 67, and in South Richmond precinct 6 and the West End precincts 18, 19, 23, 24, and the North Side of Richmond precincts 47, 46, 54, 55, 56, 57, 58, 59, and in the Central section of Richmond precincts 1, 4, and 45.

Q In 1968, Dr. Thornton, is it not true that the actual number of white registered voters exceeded the actual number of black registered voters by your calculation?

A In 1968? Yes, sir.

Q How did the vote compare, the percentage of those actually voting in 1968?

A The Crusade has always been able to turn out a greater percentage of the voters than the white [46] persons in the City of Richmond. In most elections we turn out about fifty percent of our voters; whereas, only about thirty percent of the white people vote.

Q What was the rough ratio between white and black people voting in 1968?

A There was very little difference between the actual number of voters in 1968 between the black and white people.

Q Did your registration drive continue between 1968 and 1970, sir?

A Yes. We have a continuous voter registration drive.

Q You were adding new voters to the rolls?

A That is right.

Q Did the population increase towards the black – Did the black ratio in the city increase between 1968 and 1970?

A Yes. The black population increased in the City of Richmond from 1968 to 1970.

* * *

Q [47] Is it not true, Dr. Thornton, that except for annexation with the growing voter registration trend and the growing black population in the City of Richmond, that the Crusade could have been successful in placing at least four members on Council and possibly five by 1970?

MR. OTT: I object.

THE COURT: Based on your past experience as Chairman of the Crusade –

A I am positive that we would have been able to get four persons elected to City Council who were [48] recommended by the Crusade for Voters.

I mentioned earlier Mr. Walter Kenney would have been elected had it not been for the vote in the annexed area. We know we could have gotten four persons elected, and we probably would have gotten more had not a number of candidates come from the

newly annexed area, so we are sure we would have had four and possibly five persons elected to City Council in 1970.

* * *

2. Testimony of Henry L. Marsh, III

* * *

Q [64] You are the Vice Mayor? Mr. Marsh, is it true the City of Richmond has a City Manager form of government?

A That is correct.

Q Would you explain to the Court the decision making process in a City Manager form of government.

A The policy of the city is set by the nine members of the Council. The City Manager who is appointed at the will of the Council executes the policy of the Council.

Q Mr. Marsh, you have been on City Council for a little over five years. During that time did you participate in the decisions on boundary expansion made by the City Council from 1966 when you first went into office until January 1, 1970, when annexation took effect?

A Some of the decisions, yes, I did. Some of them.

Q Some you did not?

A Yes.

Q Can you enumerate what you did and what you did not?

A I recall several votes in the Council on the question of whether or not we would request a Charter [65] change to permit the City to float bonds to pay for annexation. I recall the vote on the question of whether

or not Mr. Horace Edwards, the former City Manager, would be employed to represent the City in the annexation.

Q How did you vote on that, sir?

A I don't recall, frankly. I don't.

Q Continue.

A I voted against the bond, the permission to float bonds. There were other decisions from time to time that came to the Council concerning annexation and boundary expansion.

For the most part I believe I voted against all of these matters. There are some other matters that were decided apparently which I had no opportunity to participate in.

Q Can you enumerate those, sir?

A The Aldhizer Commission was requested by the state and appointed by the state had some activity concerning boundary expansion. I was not ever contacted by anyone from the Aldhizer Commission. I only learned of their activity and their negotiations on behalf of boundary expansion through the press.

Q Who is "they"?

A The Aldhizer Commission, the city officials and the Henrico officials in one situation, and all efforts [66] for boundary expansion, the Aldhizer Commission made, I had no contact concerning those until I learned about them in the press.

Q Did you want to?

A Of course, as elected official I was concerned about all of the decisions the government made.

Q Were you ever contacted as to any meetings, prior to meetings with the Aldhizer Commission?

A No. I was not privy to any discussions among the members of Council concerning the Aldhizer negotiations.

Q For the record, Mr. Marsh, what generally was the Aldhizer Commission supposed to be doing?

A This was a committee of representatives of the state government that was charged to work to resolve the boundary expansion problems in the City of Richmond. There were no Richmond or Richmond area representatives on this Commission.

It consisted of persons from other parts of the state. It made some efforts to bring together a merger with the part of Henrico and some other efforts at boundary expansion. Another example of non-participation would be the compromise that resulted in the annexation award. I had no knowledge of this compromise except what I learned.

Q [67] When was the first time you did learn there was a compromise of the annexation case?

A Only what I read in the newspaper about that. I had no prior discussions with other members of Council, City Manager or any other city officials concerning possible compromise.

Q Was it your desire to have participated in this, Mr. Marsh?

A Of course.

Q Did the City Council have a position paper or take any vote in support of or not in support of the Aldhizer amendment?

A I don't recall exactly. I believe we did, but I am not certain. We took so many votes in the past five years. I believe we did. I know we had some discussion of it in Council. It might have been when the

Commission was created. I am not sure. It could have been initiated in the Assembly.

Q Were your views known?

A Yes, sir. I think my views on boundary expansion and annexation in particular were known to all members of Council, anyway.

Q What were those views?

A Well, I was opposed to annexation as a means of boundary expansion. I was opposed to the attempts [68] that have been made thus far to expand the boundaries of the city.

Q For what reason, sir?

A There were many reasons. First I felt these efforts were made to dilute the black vote in the city.

In my own opinion I did not believe that even if the city – I had some question first whether or not the boundary expansion would really bring more assets to the city in view of the tremendous expense involved in meeting the needs of the new growing area. It has been my information the cost of providing essential services to the community are greater than where you have a stable community with the existing services you don't necessarily derive any financial benefits from annexation, but apart from that even assuming additional assets, the question really is how the assets are going to be used to solve the problems, not just getting more assets.

In other words, if the citizens who are concerned about equal opportunity cannot straighten their priority over decision making, it does the city no good to have more assets because the same problems in the city will continue to grow. I was not convinced annexation or

boundary expansion was the solution to the problems facing Richmond.

Q [69] Mr. Marsh, was this exclusion from meetings and the decision making process that you referred to, did this happen always with boundary expansion? Were you included on any of the decision making processes?

A Oh, yes.

Q Other than voting in Council?

A There were some matters obviously that I was not privy to but in other decisions I did participate.

Q You were not privy to what led up to and the information about the progress of any negotiations or compromising in the annexation suit, were you?

A No, sir. The first I learned of the possibility of a compromise was through a press report.

Q Through a newspaper report?

A Yes, sir.

Q In reference to the Aldhizer Commission did the Richmond Forward members and City Council get together with you and discuss how you were going to approach the Aldhizer amendment or suggest facts and figures to you or in any way involve you in the decision making process about what they were going to do, when they went to meetings with the Aldhizer Commission?

A No, sir. I was not approached about that at all.

* * *

3. Testimony of Melvin W. Burnette.

[91] *MELVIN WALDO BURNETTE*, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q Mr. Burnette, for the record would you state your name, age and your address, please, sir.

A Melvin Waldo Burnette. I am fifty-five years old. I live at 3939 Cogbill Road.

Q Is that within the City of Richmond or County of Chesterfield?

A County of Chesterfield.

Q What is your vocation, sir? For whom do you work?

A I am the Executive Secretary of the Board of Supervisors of Chesterfield County.

Q How long have you held that position, sir?

A Since May, 1949.

Q I assume you are more than painfully aware you and your County were involved in an annexation suit in 1961 that ended in July, 1969, sir.

A Painfully aware, yes.

THE COURT: It must have happened while the Navy was on leave.

Q Are you familiar with an agreement [92] referred to sometimes as the Horner-Bagley agreement?

A Yes. This was a line the city agreed they could live with, yes, sir.

Q Was this pursuant to a proposed compromise of the annexation suit?

A Yes, sir.

Q Did you participate in drawing that line, that Horner-Bagley line?

A Not in the actual drawing of the line. I did furnish our Chairman, Mr. Horner, with a great deal of information from time to time which would allow him

to be prepared to draw such a line. I met with him many times and gave him all the information we required.

Q Over how long a period of time did you meet with Mr. Horner to furnish him with this information?

A Several weeks.

Q Were you aware that Mr. Horner was meeting with city officials to discuss a compromise?

A Yes, sir.

Q Over what period of time were you aware of these meetings?

A It started back in 1965 when we had several meetings and continued off and on, right up until the day Mr. Horner went on the stand to give the compromise agreement.

Q [93] Did Mr. Horner keep contact with the Board of Supervisors during that period of time?

A Yes. Just about every time that he met with Mr. Bagley or the other people he would come back to the Board to report on the exact progress of the negotiations.

Q Was he seeking information from you during this period of time?

A Yes, indeed.

Q Did you participate in any of the compromise negotiations between officials of the City of Richmond and officials of the County of Chesterfield?

A Yes, on several occasions. I think it started out in 1965 – In 1968 we had some and in 1969 we had some.

Q Starting with 1965.

A In 1965, there were two meetings I believe that I attended at Jack Brent's house. Present were Mr.

Edwards who was then City Manager and Mr. Crowe who was then Mayor and Mr. Horner and myself. At both of those meetings that was the makeup of those present.

Q Who called those meetings, sir?

A Mr. Brent called them on behalf of the city.

Q What was the subject of conversation?

A Well, at that stage of the negotiations [94] I believe this was more or less an exploratory situation. They wanted to see if we were possibly in the mood to negotiate a settlement, more like a feeler type of meeting.

Q Did you get involved in positions? By that I mean did either side present say we need so much land or utilities, so much this, so much of that, at these Jack Brent meetings?

A Yes. I believe that it was stated on a number of occasions that the city needed people. They needed some land in which to grow, and they needed a better economic base.

Q What was the emphasis of the conference;

A It was always people, the number of people.

Q Was race discussed, sir?

A Well, I am sure it was. We pointed out to those present that about 95 percent of the people around the city would be white citizens and that any number of people that the city annexed, what we would agree to give them, would be white people.

Q How much discussion was centered around land and economics?

A Very little, actually. We would start talking about schools or land or something but –

Q Who is we?

A [95] It would come back to people, those doing the discussion, Mr. Edwards and Mr. Crowe, Mr. Horner and myself. Mr. Horner and I would talk about schools and land, vacant land, for expansion, but Mr. Edwards and Mr. Crowe would always come back eventually to the number of people they needed.

BY THE COURT:

Q What was significant about that, so I will get it straight, as you understood it?

A Well, it was common knowledge, Your Honor, that the City of Richmond was going black.

Q When you talk about people, you are talking about race?

A Yes. It was common knowledge they were going black. The city realized this. We realized it. They claimed they had to have people from Chesterfield to offset the growing black race in the city. This was the basis of their whole negotiations as far as I am concerned.

THE COURT: Go ahead. I am sorry I interrupted you. I wanted to get it straight in my own mind to start with.

BY MR. VENABLE: Continued

Q Did you attend any other meetings between [96] these two meetings with Mr. Brent, in Mr. Brent's home in the year 1966? Did you attend any meetings yourself?

A Not that I recall.

Q The year of 1967?

A Not that I recall.

Q When was your next meeting in reference to a compromise and with whom was it?

A I had a series of meetings with Mr. Kiepper, City Manager.

Q Beginning when?

A Beginning on July 16, 1968. These meetings were at the direction of the Court. I think Judge White, in one of his pre-trial conferences suggested Mr. Kiepper and I get together to seek some grounds with which we might be able to compromise the case.

Q Mr. Burnette, from July 16, 1968, back to your last meeting at Mr. Brent's home, were you aware of any other meetings that were taking place between the officials of the City of Richmond and the County of Chesterfield seeking a compromise of the annexation case?

A Yes. There were several meetings which I did not attend. At one point a number, three members of the Board of Supervisors, met with certain members of City Council. There was a meeting in Farmville I believe between certain officials of the county and the city. [97] There may have been others.

Q That is all you know about them?

A Yes.

Q In 1968, July 16, 1968, you began a series of meetings with Alan Kiepper?

A Yes, sir.

Q His position is what?

A City Manager of Richmond.

Q Did you take notes at those meetings, sir?

A I did.

Q Do you have them in Court with you?

A I did not take notes at the meetings. I went back to the office and immediately wrote down the jist of the discussions in my own handwriting, and because I

was the only one at this meeting for the county, I wanted to be very sure that I had a note on what transpired.

MR. VENABLE: Your Honor, we are referring to plaintiff's exhibit number 32.

THE COURT: I see the description.

Q The time thing is what I am interested in at the moment, Mr. Burnette. How much time elapsed from your meeting with Mr. Kiepper, the City Manager, and the time in which you wrote those notes?

A Immediately upon my return to my office [98] I wrote these notes.

Q Meeting by meeting? Where did you meet? What was discussed on July 16?

A We met at Mr. Donut which is a coffee and donut shop at Southside Plaza. This was on July 16.

Q What time did you meet?

A We met at 8:40. This was just a preliminary meeting. We discussed how to proceed on the negotiations and how we were to conduct ourselves, who possibly to include in the meetings. It was decided that just the two of us would meet, and we decided I believe at that time that we would try to give each other some tangible evidence of what grounds we might meet on.

Q Did Mr. Kiepper indicate to you the city's basic negotiating position at that time? In other words, was it people or was it land or was it tax?

A Mr. Kiepper said they had to balance the population, that they needed land for industry and they had to balance the population. This was in 1968 now, and the whole aura of events taking place during this time I think was colored by the forthcoming

annexation case, the Aldhizer amendment coming up, and we were in a state of great transition we felt. He just said they needed population, pure and simple.

Q Is it your testimony people were the [99] basis of the negotiations?

A All people, paramount.

Q Was it indicated whether they were white or black people?

A On many of these meetings with Mr. Kiepper I discussed with him the composition of the people around the city, that at least 95 percent of them were black.

Q Black?

A Excuse me. Ninety five percent of them were white, five percent were black, and that any percentage of people he would get out of our county would be ninety-five percent white. So that race was not necessarily mentioned at every meeting, but we both knew what we were talking about.

Q What conclusions were reached at this July 16 meeting?

A We decided to meet again. I guess that was the biggest conclusion. We tried to set goals to see if we could come back with a figure that each of us could get approved by our counselling board and meet again.

Q This figure you are talking about –

A The number of people.

Q Did Mr. Kiepper expressed to you at this first meeting how much land the city wanted?

A No, I don't think so.

Q [100] Did he express to you any question about the utility situation?

A No.

Q Did he express to you anything about roads or schools?

A No.

Q Did he express any interest in the tax base, where the shopping centers, things of that nature were?

A I, of course advised him if he got anything he would have to get Southside Plaza which had I think about seventy percent of our sales tax.

Q Did he bring up the subject of the tax base?

A No, I don't think so.

Q A fair statement would be Mr. Kiepper was negotiating on the number of white people?

A Yes, sir.

Q What was your next meeting with Mr. Kiepper?

A We met on July 29. No, on July 30. The meeting was arranged for on July 29. We met at the Virginia Inn. We had a very good meeting. We discussed the situation considerably and I gave him a map that would show the county would willingly settle for 8.5 square miles [101] and about 18,500 people.

Q Did you break down in that information that you gave to Mr. Keipper the racial composition on those numbers of people?

A No. It was not necessary.

Q Continue.

A I suggested that he might seek a settlement along these lines, that it would certainly help our situation if he could get this thing out of Court. He said he thought that the line suggested would not be sufficient for him to settle on, but he did take the map and said he would see what he could do with it.

Q Did he at any time indicate to you at this meeting what amount of territory the city would be

interested in, geography, in starting at a negotiating point with?

A No.

Q Did he discuss with you tax base?

A No.

Q Did he discuss with you schools?

A No.

Q Did he discuss with you utilities or roads?

A Not at that time.

Q Is it a fair statement that at this point [102] Mr. Kiepper was still negotiating on how many white people the city required?

A He always came back to a number of people they had to have.

Q What was your next meeting with Mr. Kiepper, sir?

Before we get into that, did Mr. Kiepper make any mention to you of his position with City Council, how much support for these negotiations he was having from City Council?

A In one meeting he said that he had six members of the Council, that he was dealing with, and that the other three had not been told.

Q Did he ever identify who the other three were, sir?

A No, he did not have to. It was pretty well evident by the newspaper.

Q Would you explain that remark, sir.

A I think Mr. Marsh, Mr. Carpenter and Mr. Carwile were not consulted with, and it was very eivdent by actions of the Council in the newspaper. I had no doubt when he made the statement that he had only negotiated with six members of Council.

Q Did he express to you the fact that he was negotiating for the six members of Council, that this [103] was their position?

A Well, he represented the six members of Council. He had not consulted with the others. He let me know the others had not been consulted by anybody on this case.

Q So he was negotiating for those six members of Council.

A I assume that he was, yes.

Q What was your next meeting with Mr. Kiepper?

A We next met on August 5, 1968, at my house, and I gave him a map which showed about 18,871 people and showed him where industrial land was and the area had about eighty-five to ninety-five percent of the sales tax in that area, but only five percent of the families were colored. He again said it was too small.

Q In what way was it too small? Geographicaly too small?

A No. It was only in the numbers again. He had to have a certain number of people. At this meeting I explained how nice it would be to settle this thing out of Court. We would not have to fight a vicious annexation suit. We would save a lot of money in lawyers' fees. We certainly could use the time to better both the city and the county rather than sitting around in Court. He agreed [104] with all of this of course except we had not offered him enough people.

Q Had you been able to get the city to delineate a line on a map?

A No, sir. They never gave us a map until quite a

bit after this time.

Q What was your next meeting with Mr. Kiepper?

A We met again August 12. We met at my house again. He gave me a map at this time showing 35.7 square miles, and it had 56,540 people. I told him that it was no use to negotiate any further, that we were too far apart, and it was not in the best interest of the county, that we consider a thing of this kind. He seemed to want to continue the negotiations, and he stated the city perhaps could bring this down to 50,000 people.

I think at one time in the meetings that I said we would be able to get up to about 25,000 or 30,000, but this point in time we were still miles apart.

Q What was the city's position at this point on utilities? Did he discuss utilities with you at this meeting;

A No. In one of these meetings I discussed with him that we had to maintain enough of our school system and our water system to be able to continue as a [105] county, and enough of our school system to be able to continue as a county.

Q Did he ever discuss with you the city's need for utilities, land, tax base or schools?

A He did discuss the city's need for additional land at several occasions, but it was always our negotiations were in a framework of the number of people.

Q Did he present any facts or figures of how much vacant land he needed?

A No.

Q It was a passing remark?

A Yes. It was one of the issues that he was supposed to consider, but certainly it was not initially

as prominent as the number of people.

Q He was pretty specific about the number of people?

A In every case.

Q What was the result of that meeting?

A He left at 10:30 that night. I told him if we needed another meeting I would call him, that I did not think that another meeting would be necessary, that we were too far apart.

Q Did you in fact meet with him again?

A Yes. On August 19 I called him and we [106] set a meeting for the 21st at 9:00 o'clock. We met again at Mr. Donut Shop. Here again I stressed the need perhaps that we should continue the negotiations as the Court had requested.

Q May I stop you a moment so we can get the time frame of this. Had you entered trial yet on annexation at this point?

A August 19, I don't think we had entered trial.

Q You went to trial twice?

A Right, several times, I think. Twice. First of all under Judge Old and I believe 1966. Then under Judge White in 1968. Again under Judge Abbott in 1969.

MR. VENABLE: For the Court's benefit, as we go through these meetings, Your Honor, defendant's exhibit 24 and plaintiff's exhibit 7, they are one and the same. They are a chronology that indicate the progress of Chesterfield, Henrico, and other things. For the purpose of this testimony, the Chesterfield trial –

THE COURT: Thank you.

MR. VENABLE: It should be two or three pages.

Q [107] Back to the August 19 meeting what was discussed at that meeting sir?

A Well, I think we stressed the need for continued negotiations as the Court had requested, and I told him that we had many problems on the county's side. We had a split Board. Some wanted me to continue to negotiate; others did not want to prolong it at all. He made something of that same statement as to City Council and that he had agreed to give up to settle the case for about 50,000 people and that I had agreed that I probably could get the Board to agree on about 30,000, 35,000 people, that we were not too far apart if we could just reach a common ground. He would take this back to his Council to see if we could get some agreement.

Q Did you subsequently meet again, sir?

A. On August 26 Mr. Kiepper called, and he said that the city would need people, industrial land and vacant land, in that order, and the city would negotiate further on a figure between 36,000 and 50,000.

Q Did he tell you at this particular juncture – He has told you the number of people – Did he tell you how much land, how much industrial land or vacant land? Did he give you any figures?

A No, just people.

Q [108] Continue, sir.

A. We met again on Friday, August 30. We arranged that he would meet me at 6:00 o'clock, at a place not too far from my home. He said at 7:00 o'clock, and then he said he had been delayed, and we decided to meet again on the following day, on the 31st. We met at Schraffp's. We had lunch. I gave him a map showing 21,358 people. He said we could possibly

add some 3300 people to that. He pointed out again we had a divided feeling, and that this was a real "hard sell" in our eye. He said the city would never accept that few people with the present Council and the present lawyers. We had a very frank discussion of this, and he did not think we could settle at that point.

Q What was the subject of that frank discussion you had?

A Well, the majority of Council believed they had most of the case won, that they would get all that they asked for and that they had some questions as to whether they could pay a bill with only six members of Council and there were other considerations stated at this time.

Q At this time did Mr. Kiepper present you with any figures on what he needed in vacant land?

A No, sir.

Q [109] What about with reference to industrial land?

A No, sir.

Q Did he discuss with you feelings as to the tax base, schools, roads?

A No.

Q So again the only thing he is speaking of is the number of people.

A The number of people.

Q Mr. Burnette, did Mr. Kiepper ever tell you when you were going to get to talk about land and schools and the rest of this stuff?

A No. I had the idea from my figures if we could ever agree on the number of people everything else would fall in place.

Q What was your next meeting with Mr. Kiepper?

A We met on September 12. He gave us a map at that time, I believe. No. He said he would bring it by. He came late that afternoon and presented his need and stated we should still try to negotiate. His line had about 45,000 people in it. I told him I did not think our Board would accept this, and we did talk for about twenty minutes or so and he left. That was the last meeting we had.

Q [110] His line shows 45,000 people? How much vacant land did it show?

A I don't have that copy.

Q Did he discuss land?

A No, people.

Q Schools, roads, utilities?

A No.

Q Assessable?

A No.

Q Industrial land?

A He mentioned the fact that they needed land for industrial expansion.

Q Did he say how much?

A No, sir. On this particular time it was only people.

Q Did you have anymore meetings with Mr. Alan Kiepper?

A Not alone.

Q Did you ever discuss the councilmatic election of 1970 with Mr. Kiepper?

A Yes. I think that during our discussions we pointed out that the Council would have an election in 1970, that it would be nice to settle this case before January, 1970, so that would go into the city, which

would help the city out in its coming election. This was very [111] important with the city at that time. Everybody knew that in 1968 the elections were right close. We expected they would be much closer in 1970, and I think that was the basis for all the negotiations, was to get more people in so they could keep the Council of the City of Richmond white.

Q You broke off your meetings in September, and you went to trial. Is that correct?

A Yes, sir.

Q When did you next meet with officials of the city?

A I believe it was in Williamsburg and on the Aldhizer amendment.

Q That was the next time?

A The next time I had any meetings with the city, yes.

Q When did Judge White disqualify himself in the annexation case? Do you remember?

A I think it was January, 1969.

Q Did you have any proceedings prior to that?

A Not as far as I can remember.

Q You mentioned the Aldhizer amendment, the Aldhizer Commission as opposed to the amendment. Was the Aldhizer Commission meeting during the Fall of 1968?

A [112] Yes. The Aldhizer amendment was in the Fall of 1968. It was passed by the General Assembly in 1969. It had to be reaffirmed in the Fall of 1968, yes.

Q When was the first time you were requested to attend meetings with members of the Aldhizer Commission, before or after Judge David Meade White's disqualifying himself?

A I am not sure.

Q Where was your first meeting with members of the Commission?

A In Williamsburg, I believe the first meeting was held, and I believe one is in the Hotel Richmond. It could have been vice versa.

Q What was the purpose of the Aldhizer Commission meeting?

A The boundary expansion – Richmond has been telling the General Assembly for years the problems that it was having with its boundary expansion, and its frustrations. It did not seem to want to annex Henrico. The case in Chesterfield had been thrown out of Court. It was somewhat frustrated and I think this Commission was set up to take care of the problems of the City of Richmond, again the capital of the Commonwealth.

Q This meeting you had in Williamsburg with the members of the Aldhizer Commission, who was there [113] representing the City of Richmond?

A I don't think that I can recount them all, but I think Phil Bagley was there.

Q What was his position on Council at that time?

A He was Mayor at the time.

Q Who else was there?

A I think Conrad Mattox was there. I think Mr. Crowe, Mr. Wheat was there, to the best of my knowledge. I am not certain about Mr. Crowe.

Q Did these gentlemen who represented the City of Richmond attempt to persuade you to merge voluntarily with the city and Henrico at this meeting in Williamsburg?

A Yes, this was a great part of the thrust of the meeting. The Aldhizer Commission thought that if we

could get some cooperation between the two counties, to cooperatively give to the city a part of each cost then the city would not have any problems with its racial buildup.

Much was discussed concerning the portion of the county that would be given to the city. Actually, a map was drawn.

Q Mr. Burnette, what reasons did Mr. Bagley, Mr. Mattox, Mr. Wheat, other members of the Richmond delegation [114] to the Commission meeting in Williamsburg give you to try to persuade you to voluntarily cooperate with some form of merger?

MR. CROSLEY: I ask that the question be limited to one individual at a time.

THE COURT: I think he may explain. The objection is overruled. Go ahead, sir.

A Would you repeat your question.

Q What statements did these individuals representing the city, Mr. Bagley, Conard Mattox, Mr. Wheat and any other member of the delegation which you may remember, what reasons did they give you as representatives of Chesterfield County for trying to persuade you to voluntarily merge?

MR. CROSLEY: I object to the question. It is leading.

THE COURT: Fine.

Q – To voluntarily merge with the county, with Henrico and the city.

A Well –

THE COURT: Try to be specific as to who said what, if you can, if anything.

A Judge, this happened several years ago.

THE COURT: I understand.

A I can only recall the jist of the conversation. [115] Who said exactly what I don't know.

THE COURT: Can you tell me who was present at the conversation?

A I have already mentioned the city's side. For the county, Mr. Horner and Mr. Dietsch and myself and I believe Mr. Dunn and several others from Henrico plus all of the members or most of the members of the Aldhizer Commission.

BY THE COURT:

Q I take it you are about to tell me the jist of the conversation. Is that correct?

A Yes, sir.

Q Can you tell me whether it emanated, the jist, came from the delegation from the City of Richmond or from the other gentlemen?

A The City of Richmond emphasized to the Aldhizer Commission that they were in trouble, that the black population was growing, and they had to get some more white people from either one or both of the counties. This was the reason they wanted to get, or the reason they wanted to expand their boundaries.

* * *

Q [118] At what point did Mr. Horner and Mayor Bagley reach an agreement and compromise?

A I think this was signed on May 15, 1969.

Q You are talking about the line?

A Yes.

Q [119] The Horner-Bagley line?

A Yes. The money was not decided for quite a bit later.

Q Do you remember when the city actually agreed to all the terms of the compromise?

A Mr. Horner testified I believe on June 16 and we met again about the 19th and again on the 24th of June.

Q What were the conditions of the compromise, sir?

A We had certain conditions. The county could build schools apparently faster than the city. We were to build three schools for the city. We were to educate some of the children that lived in the annexed area because they did not have enough school room space.

Q Would you go back to that last agreement. How many children did you have to educate for the city because there were not school room spaces?

A I believe there were about 3500 or 3600.

Q They were not enough to take care of that many children? When was that period of time?

A Quite a while after the line was drawn. It was one more reason, there would be no right of appeal by the city, because if we signed the compromise it would not be any right for the county to appeal. It might upset [120] the ruling and prolong it further in the courts. I think of the night of the 19th they had mentioned rather pointedly that if we did appeal that the people in the annexed territory would not come into the city on January 1. This was absolutely necessary in order that they could vote in the election of June, 1970.

Q I want to break your line of thought for a moment to come back to the night the line was agreed upon. Did you receive a telephone call that evening?

A Yes. I was in my office. It was at night, as I recall. I was in the office and Mr. Horner was with Mayor Bagley at that time. He read me the line and asked me to figure up the exact number of people in that line to ascertain if 44,000 people were in that line.

Q Did he state that the terms of a compromise were substantially worked out and that Mr. Horner took the stand and testified – How much time was left in the annexation trial itself?

A About three or four days, perhaps three days I would say.

Q This compromise agreement that you entered into, was it adopted by the Court?

A Yes, it was.

Q Verbatim?

A Yes, sir.

* * *

Q [121] On the night that you looked at the population information on the Horner-Bagley line did Mr. Horner require any other information from you other than population?

A He asked me about the number of school children in the area. I gave it to him. I don't know whether he told Mr. Bagley that or not.

Q Did he ask you about assessables?

A No, sir.

Q Did he ask you about vacant land?

A No, sir.

Q About roads?

A No, sir.

Q Utilities?

A [122] No, just people.

Q School children?

A I think that was for his own benefit.

* * *

Q [124] Mr. Burnette, you testified in answer to Mr. Venable's question that during the course of discussions with you and Mr. Kiepper that the basic topic, the principal topic was negotiation of the number of white people. It that true?

A No. I said people. I did say, however, that it was understood that by people we meant 95 percent white people.

* * *

CROSS EXAMINATION

[126] Isn't it true, Mr. Burnette, that Mr. Kiepper indicated to you that what he meant by balance of population was an economic and social balance of the population?

A No, sir.

Q What did he indicate to you? What did he say? What statements did he make?

A He must balance the colored and white population for the coming election.

Q He used those terms – colored –

A Colored, black and white, maybe, but we understood the city was having an election in June, 1970.

* * *

4. Testimony of Grady W. Dalton.

* * *

Q [139] For the record would you state your name, age and address.

A My full name is Grady William Dalton, age sixty-three, Richlands, Virginia.

Q Mr. Dalton, do you hold any elective office in the State of Virginia?

A I am a member of the General Assembly representing Tazewell County.

Q Mr. Dalton, I would like to take your attention back to the special session of the General Assembly in 1969. Do you remember a commission and amendment that came before the House and the Sneate to vote upon called the Aldhizer amendment?

A Yes, I do.

Q What was the purpose of the Aldhizer amendment? What was it going to do? Give the state power to do what?

A As I recall, the Aldhizer amendment, it merely provided or was to provide in the State Constitution that the General Assembly would have the power or be [140] authorized to determine the boundaries of the capital city each ten years.

* * *

Q [142] Did the people identify themselves as being from the City of Richmond?

A They did.

Q What was their problem?

* * *

Q Did they identify themselves as representatives of the City of Richmond as opposed to representatives of Chesterfield County?

A [143] From what they said to me it would be no question about their identity as representing the City of Richmond.

THE COURT: Were they members of the House?

A Members of the General Assembly, yes.

Q What was their problem?

A You know, I am classed as a country boy, being from back in Tazewell County. The proposal was in this manner, well, you have no problem out in the far southwest, but we have an intolerable situation in Richmond. You have no race problem out there because you have very few colored people, but this city is becoming about fifty percent colored. We have a problem. We want the help of the country boys. That is the jist of the language that was used, of the conversation, as I remember it. Again, I cannot put my finger on any particular person that said that to me, but I am sure they were of the Richmond delegation.

Q Mr. Dalton, did you vote for the amendment?

A Yes, sir.

Q Why did you vote for the amendment?

A Not because anyone convinced me. It was my own convictions. I thought we owed something to the [144] State of Virginia in determining the boundaries of our capital city.

MR. VENABLE: No further questions.

MR. DAVENPORT: No questions.

WITNESS STOOD ASIDE
(Having been excused).

5. Testimony of Irvin G. Horner.

[145] IRVIN G. HORNER, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Mr. Horner, would you state your name, age and address, please, sir.

A Irvin G. Horner, age fifty-one. My address is Mosely, Virginia.

Q Is that within Chesterfield County?

A The Post Office is Powhatan. My residence is in Chesterfield.

Q What business are you in, Mr. Horner?

A I am in general business, a home builder, insurance, motel, general merchandise store, and so on.

Q You hold an elective office, sir?

A Yes, sir.

Q What is that?

A Board of Supervisors, Chesterfield County, presently serving as Chairman of this Board.

Q How long have you been on the Board of Supervisors of Chesterfield County?

A Twenty-three and a fraction years, be twenty-four years the end of this year.

Q I presume, sir, you are aware the county was involved in an annexation beginning in 1961 and ending [146] in January, 1970.

A Yes, sir. I was there at the start and there at the finish.

Q Have you heard the expression "Horner-Bagley line"?

A Very many times.

Q Mr. Horner, what part did you play in the compromise of that annexation suit of the City of Richmond against Chesterfield County?

A Ask it again. You mean in toto, initially or what?

Q You negotiated the compromise, did you not, sir, for the county on behalf of the county?

A I attended many meetings in behalf of the county relative to an effort to reach agreement, to save whatever would be saved from a fought contest in Court.

Q What was the first contact you had with officials from the City of Richmond in which the subject of compromising the annexation suit was discussed?

A The best of my recollection, the first contacts were had immediately following the city's decision to not accept the Henrico County award. This I believe was in 1965, late Spring, early Summer.

* * *

Q [148] Did you have a subsequent meeting to the Jack Brent meeting in 1965?

A Yes. There were two such meetings and possibly, and I believe a third meeting at which two other supervisors, namely Dr. Martin and Mr. Raymond Britton were there. The city people there at the time, I am not [149] totally confident of the exact persons other than Bagley was there at this meeting and a Councilman, and I am confident Mr. Edwards was there. Also I believe Mr. Crowe was also there. As I recall, I believe there were three meetings. Two of them Burnette and I and Mayor Crowe and Mr. Edwards, and the other was a Supervisor.

It really represented a committee from our Board of the areas contiguous to the city. They were entitled to be informed of what was going on.

Q Did you get down to the nitty gritty of drawing lines, presenting maps, talking about land and all the rest of that stuff?

A A lot of talk went on. I cannot recall any lines being put on the maps. We talked the maximum we thought we could give up. I don't believe the city talked of anything they would definitely accept.

Q The city did not present any proposals to you?

A No, sir.

* * *

Q [150] Where did you meet, sir?

A We met in Farmville.

Q Where in Farmville? Do you remember, sir?

A We met in the home of Mr. Wheat's wife's parents.

Q What did you discuss at that meeting?

A At that meeting – There again, it was an exploratory situation. We talked; they talked. They talked about land. They talked about people and just general discussions in that direction.

Q Did you go down with a proposal in mind?

A We did not go to this meeting with any definite proposal.

Q Would they put a line on the map at this meeting?

A They did not.

Q What was the basis for their negotiating point at this meeting?

A At this meeting it was relayed to us, on pressing by me, we were there for a purpose to find out what the least the city would consider was in the event there was a possibility of getting together and eliminating [151] the trial and Court suit.

Q What was the least they would consider?

A This was stated by Mr. Wheat to my recollection, that we needed 44,000 leadership type of white affluent people.

Q Did Mr. Wheat tell you how much land they needed?

A No, and any discussion, I am confident, was they needed land for expansion, but how much was never talked about.

Q Did they tell you how much roads or schools or utilities –

A Those items to my knowledge were not discussed.

Q Were you down there prepared to discuss them?

A We were down there to listen and discuss anything that was pertinent to what we believed our case to be. We did not get an opportunity to discuss; we did not have anything to discuss.

Q Did you attempt to discuss land and schools and roads and utilities and assessables?

A It was our belief if we were to get, the least they would accept, these would be the things we would have talked about.

Q [152] What did they talk about?

A They talked about people.

Q Did they talk about votes?

A I am sure in this discussion votes were talked about.

They asked us in the fifty-one square mile area approximately how many black citizens were in this area. I had no definite census, but it was estimated about five percent of the area of fifty-one square miles were black and about ninety-five percent were white.

Q When they discussed people, were they discussing a need for 44,000 white people or 44,000 black people?

A Well, in that area, they had to be talking about the ratio I just mentioned.

Q You specifically remember Mr. Wheat's saying leadership type white people?

A Yes, sir.

Q White people?

A Yes, sir.

Q Did Mr. Wheat also discuss and use the word "voter"?

A In the discussion, as to the context, I don't know, but I am confident the word "voter" was used.

Q Did Mr. Davenport or Mr. Wheat draw a [153] line on the map for you?

A Not to my knowledge.

Q Did you attempt then to get them to talk geography? Where a line would go?

A We were there to find out. We were not in position to push anything beyond what they were willing to talk about. We did not push.

Q Were they willing to talk about anything but white affluent people?

A This was the principal jist of their discussion.

Q What was the next meeting that you attended in reference to compromise, Mr. Horner?

A The next meeting to my knowledge that I attended was in the late Summer of 1968. It was two or perhaps three years after the Farmville meeting. In the interim we realized our case went to Court, was thrown out, taken to appeal, appeal turned down by the State Supreme Court and then after that was turned down we were obviously coming back into Court. So with this background we met, I and Mr. Dietsch, the Supervisor from Manchester District, the most contiguous district to the City of Richmond, met with Mayor Bagley who was Mayor at this time, having been elected I believe in 1968, and Mr. Jim Wheat.

We met in a conference room of the [154] Chesterfield County School Board. At this time the engineering firm that we had employed in the annexation case had prepared an easel type of map cut into districts, a magnetic type, which these study areas were numbered, etc., and they were on the map. They were separateable, to move them around, divide them, and this was at this meeting. We arranged to have this at this meeting so we could discuss geography if it became necessary to do so.

Q Did you in fact discuss geography at this meeting?

A No, to the best of my knowledge geography was not discussed. We had the map there available to be used. To my knowledge it was not used.

Q Let us talk about this map. It is a jigsaw puzzle map – How was it broken down?

A It was a map broken down by study area. It was a separate piece to be fitted into another piece.

Q Was anything written?

A Numbers.

Q Numbers of what?

A Just the numbers, 1, 2, 3 and 4. This represented on a tabulation, the square miles, people and other items.

Q Were you successful in getting Mayor Bagley and Councilman Wheat to show you where in the [155] fifty-one square miles they were requesting to draw a line for compromise?

A We were naturally concerned if they wanted 44,000 people, and I might add here that I had no sympathy or indication or belief, that the governing body I represented thought this amount of people was anywhere close to being reasonable. However, we were willing all along to talk and discuss, hoping that an agreement could be gotten together on. We went to this meeting in this frame of mind, trying to find out from the city, if you want 44,000 people, do you have in mind anywhere they should come from.

Q Did they have in mind where they should come from at this first meeting?

A If they had it in mind they did not reveal it to us.

Q Did they reveal to you how much vacant land they wanted?

A No, sir.

Q Did they reveal how many schools they wanted?

A No, sir.

Q Or how many utility facilities they wanted?

A No.

Q [156] Or how many assessables they needed?

A No, sir.

Q What percentage of industrial land they needed?

A No, sir.

Q The whole basis was people?

A We pressed them for where the people should come from. They apparently were not prepared to answer it.

Q When was the next meeting that you had?

A The meeting you just asked me of, and I reiterated – it became exposed to the press just prior to that day. Those led me to feel the trial was going to open in a few days, September 8, I believe, to be exact. We did not feel we should meet anymore in this atmosphere. We thought it would be improper and unethical. So it was determined at the end of this meeting we would meet again after the start of the trial if it proved all parties were interested.

Q Mr. Horner, at this first School Board meeting –

THE COURT: School Board meeting?

Q This meeting at the School Board, excuse me, sir. The conference room.

A On the premises of the School Board. [157] They had a much better facility than we did.

Q A better conference room?

A The new building and it is bigger and nicer and is air conditioned.

Q They discussed 44,000 white people or 44,000 black people at this meeting?

A I would not like to say at this meeting. It had already been stated in other meetings and I knew what they were talking about. I could not say white or black people came up at this meeting.

Q You knew what you were talking about?

A I knew what they were talking about. They knew. We all knew what they were talking about.

Q The trial began. Did you have a subsequent meeting pursuant to agreement after trial began?

A We did. We came back, similar circumstances, same people, practically a carbon copy, same discussions. It was not any accomplishment to my knowledge when we parted.

Q At this second meeting did they discuss what they needed in the way of utilities?

A No, sir.

Q Schools?

A No, sir.

Q Roads?

A [158] No, sir.

Q Taxes?

A No, sir.

Q Assessables? Vacant land?

A No, sir.

Q Industrial land?

A No, sir.

Q Did you have any further meetings in 1968 after this second abortive meeting at the School Board?

A Yes, sir, we did, sir. As you recall or may not recall, but it did develop that the case went to trial. Judge White who was Chief Judge at this time became sick, I believe in October, and had to excuse himself from the bench. The trial stopped while he was hospitalized, and in December or just prior to Christmas, since the trial was in recess, had not gone too far, it was believed by those in the city and us that this would be an appropriate opportunity to talk again, to see if there was any meeting of the mind to be helpful to both.

Q Did you meet?

A In Mr. Burnette's family room of his home. At that meeting it was Mr. Burnette, I, and I believe the same Supervisor, Mr. Dietsch, from Manchester, and from the city's side, one of the parties could not come. [159] Anyway, I believe Mayor Bagley was there and Mr. Crowe. As I recall Mr. Crowe had an engagement and could not get to the meeting.

Q Mayor Crowe?

A It was my understanding Mayor Crowe could not get to the meeting. I was more interested in my people that were going to be there. Bagley was the Mayor, of course. It was my belief Mr. Crowe did not make it. I was under the impression Mr. Crowe is the one that came and Bagley did not, but it is my belief after further consideration that Mr. Bagley was there and Crowe was not.

Q Who was there from the county?

A Mr. Burnette, myself, Mr. Fritz Dietsch.

Q You discussed the compromise. What was the city's position in reference to compromise? What was their bargaining point at this meeting?

A You have got to keep in mind we had had several meetings. We knew what the basis of maximum or minimum was they would accept. We knew this. This is all we knew. We were of course anxious to know geography as to what they were interested in, and of course as I said we thought their request was unreasonable. We were hoping and wishing they would immediately withdraw what we considered unreasonable demands and that it would eventually come to something reasonable.

Q [160] What were the unreasonable demands?

A 44,000 people.

Q Did they have any unreasonable demands about how much land they wanted?

A No, sir.

Q Or how much schools they wanted? How many roads?

A They did not discuss them.

Q Utilities? Assessables? The tax base?

A Those items were not discussed except other than to the degree the city people at times, at some of the meetings, indicated they needed land for expansion. The amount or the quantity was not brought up.

Q Were you successful in getting the city to put a line on the map?

A No, sir.

* * *

Q [163] Mr. Horner, did the Aldhizer Commission attempt to get Chesterfield County and Henrico County to voluntarily merge a portion of their counties with the city at this meeting?

A The Aldhizer Commission was interested in accomplishing the task they were set up to do, to explore ways to accomplish the expansion of the boundary areas of the capital city.

Q Did they ever agree on a line?

A We did call a break in this session at lunch time I believe, and they asked us to sit down, asked Henrico and asked us to do it, and have the city do it, to determine what the best was we would do from our governmental standpoint to bring about boundary expansion of the City of Richmond.

Q [164] Did they indicate if you did not they would –

A The friction was very strong there.

Q Did you enter into conversations with Conard Mattox, Mayor Bagley and other members from the Richmond City delegation to this meeting in Williamsburg? Did you enter into conversations with them about why you should give up part of the county to the City of Richmond?

A This meeting in Williamsburg, it was a round table, a lot of people. The city had their chance to talk, and we and the county were the commissioners there and their legal representatives.

Q I will rephrase that. What was the reason the city officials gave to this group for needing more support, expansion of the boundary area?

A The people from the city that talked, the city must gain more property or very shortly it will be an all black city.

Q An all black city? Did they lay any stress on economic or vacant land? Did they dwell on it, talk about it a lot?

A To my knowledge they did not talk about it enough to make an impression on me.

Q Did they talk about blacks and the blacks taking over the city a lot?

A [165] It was talk about the city people at this meeting, if the city was not allowed to expand its boundaries the government control would be taken over by the black population.

* * *

A [169] Yes, yes. About May 1 we met at my office on Hull Street. He had a map with him that day. I [170] had a map that day.

Q Did he take a line on that map?

A No. He had no line on it, but words to the effect – I don't know what the number of people, to but I would like them in this direction – I believe he indicated a figure different at this time that my people now say, take about 55,000 to solve the problems. My answer was I could never have gotten 44,000 through my boys. We were heading in the wrong direction.

Q When he traced out the area he would consider on the map, did he also trace out for you how much vacant land it was out there?

A Not to my knowledge.

Q Did you get to talking about schools?

A No.

Q Utilities?

A No.

Q Roads?

A No.

Q Etc.?

A No.

Q What were you talking about?

A We were talking about where an area would be or possibly be, to encompass the number of people they said they needed to accomplish their desires and for [171] settlement, for a compromise agreement.

* * *

A [173] So we set up an appointment for that evening I believe which was May 15. I went to his office. That is in the Mayor's office on Broad Street.

Q At that meeting did the two of you arrive upon a line that would be acceptable to the city?

A At that meeting we of course met and had a map and talked. I related to the Mayor in my phone conversation I did not have any idea that my Board would agree on this volume of people.

Q Which was the volume of people?

A 44,000 people or thereabouts. He mentioned a higher figure at another meeting. So I relayed to Mayor Bagley at the time we had been meeting an awful lot relative to this matter, and I have nothing to show for it [174] as to what the city will do. I said, I don't know what our Board will do, but I have no idea they will meet the number of people you are asking for.

Q Did the Mayor indicate to you that his Council would go along with what he agreed on?

A The Mayor said that he had been in touch with Council, with the majority of Council, and knew what was on their mind. He knew about what they thought they would agree on. I said – and he indicated this was approximately 44,000 people. I said, well, I had nothing. I have not had anything to tell my boys concretely what you will do. Mayor Bagley had pointed to a map, and said we could go out this area or this area. I said, let me dictate a line to you of an area that will encompass this many people. You write it down. If you would, as I dictate it to you write it down.

Q Did you dictate a line?

A I did dictate a line.

Q Did he write it down?

A He wrote it down and after concluding the writing down of the line, I said, Mayor, I have not got

anything to show for it. Will you sign this to the effect the City Council will agree to such line so I will at least have something concrete to take back to my people.

Q Is the line substantially the line that [175] encompasses the area that was finally annexed?

A It is the line except for a couple minor changes made at our request and one at the city's request.

Q How did you verify at that time the number of people within that line?

A After I dictated the line, and it was written down, I called Mel Burnette, our Executive Secretary, who has been following the contents of the study areas, through all the discussions and proceedings. I told him the study areas that were involved, that encompassed the line. I reiterated to him that according to the 1968 census taken prior to the beginning of the first trial that this area encompassed at that time 43,000 and some odd people.

I asked him at that time for my benefit how many school children this included.

Q Did Mayor Bagley want to know about school children?

A The Mayor did not ask for this information.

Q Did he want to know how much vacant land was in that area?

A He only asked me to verify how many people were in the area of the line that we drew. This I did, and at the bottom of this letter at my suggestion I [176] wanted something to go on, or words to the effect if settlement can be agreed upon I feel confident the City Council will agree to this line.

Q Did the Mayor request for you to tell him anything about utilities in that area?

A No.

Q Roads?

A No, only the number of people that were in this line.

He asked me to verify this which I did.

* * *

A [177] We met with him, John Thornton and myself met with Mayor Bagley and John Davenport on the evening of the 11th in the Mayor's office.

Q Did you discuss the agreement? Correct?

A We discussed the agreement.

Q Did they give you any conditions that [178] went along with this line and a dollar amount, any conditions to the agreement?

A They gave the condition – Our purpose of going there was to find out if they meant business and what they said, if they meant it, and if they were willing to stand behind it. They stipulated the condition they would go along with the agreement provided that no appeal was made by the county, and the annexation should take effect January 1, 1970, and the people in this area would be citizens from that date on and would be eligible voters in the Councilmatic election of 1970.

Q Who said that? Mayor Bagley or Mr. Davenport? Do you remember?

A No. The four of us were in this meeting when it was discussed. Whether Mayor Bagley or Mr. Davenport said it, I am not sure. They may both have said it, but it was said. Which one said it, categorically said it, I just could not say.

Q They were both in the conversation?

A Both in the conversation. There were four of us present. All four of us were in the conversation.

Q Did they ask you to eliminate the intervenors?

A It was suggested to us it would be [179] appreciated if we do everything we could to discourage the intervenors from appealing. Our lawyers reply was we had no control over them. Don't expect any assistance from us in this matter.

Q Mr. Horner, the agreement, the compromise agreement you formalized that night, was this agreement adopted by the annexation Court, the line and the money and all the other matters?

A This is the agreement that was ultimately adopted by the Court.

Q Verbatim?

A To my knowledge it was verbatim. Another exhibit was entered in by the county, number 108 that spelled out some details, but the line and the money was verbatim as to what the Judges handed down.

* * *

6. Testimony of Donald G. Pendleton.

[208] BY MR. VENABLE:

Q Mr. Pendleton, for the record would you state your name, your address and age.

A Donald G. Pendleton, Amherst, Virginia. I am thirty-nine years old.

Q What do you do for a living, sir?

A I am a practicing attorney in the town of Amherst and also the County of Amherst, Nelson County, Lynchburg and Campbell County.

Q Do you hold any elective office, sir?

A I am a member of the House of Delegates.

Q Representing what?

A I presently represent the City of Lynchburg and the County of Amherst.

Q When did you first become elected to the House of Delegates?

A I was elected in 1965, the Fall election of 1965, and to the seat in the House of Delegates in 1966, January.

Q Mr. Pendleton, are you familiar with a piece of legislation in the 1966 Assembly introduced by Senator Willey, to form a study commission to study the [209] expansion of boundaries of the City of Richmond?

A Not in 1966.

Q What year was it, sir?

A It has got to have been 1968.

Q Are you familiar with the commission that was set up?

A Yes.

Q It is referred to as the what commission?

A The Aldhizer Commission.

Q Who was the Chairman of that Commission?

A Senator George Aldhizer from Rockingham or Harrisonburg, Virginia.

Q Who appointed you to that Commission, sir?

A The Speaker of the House of Delegates.

Q Did you hold a position on that Commission?

A At the organizational meeting in July, 1968, I was elected the Vice Chairman of the Commission.

Q This Commission was formed by legislation in the 1968 Assembly. Is that correct, sir?

A It had to have been, yes.

Q Who introduced that legislation?

A If I recall correctly it was Senator Ed Willey of Richmond, Virginia.

Q [210] He represented the City of Richmond?

A At that time I believe he did.

Q When was your first meeting with the Commission, sir?

A In July, 1968.

Q Who attended that meeting?

A Well, it was of course the members of the Commission minus Delegate Edgar Baker from Lee County. He did not attend the meeting until after we had gone into special session, the special constitutional session in February, 1969.

Q Did any representatives from the City of Richmond, officials from the City of Richmond and the counties of Henrico and Chesterfield attend that meeting?

A Senator Ed Willey was there. He represents the City of Richmond in the State Senate, I believe Conard Mattox also of the City Attorney's office was there. We went into Executive session.

Q Was there anybody from the county there, sir?

A I don't recall people at the county at that particular meeting. They could have been, but I don't recall.

Q What was discussed at that meeting, sir? What was the topic?

A [211] The purpose of the Commission and what we were trying to achieve, the fact we operated with no state funds, that we had no staff other than one member of the Statutory Research and Drafting, and it

was decided we would not ask funds from anybody, particularly the City of Richmond or the counties of the state. We did this at our own expense. The Aldhizer Commission was at the individual's' own expense.

Q You mentioned the purposes of the Commission. I assume that you and other members of the Commission itself had ample time to sit down and discuss just what it was you were trying to do, did you not?

A That is correct.

Q What were you trying to do?

A Well, it was brought to the attention of the Commission that at the July meeting if certain elements in the City of Richmond were to take over the city government they would tear down all the monuments on Monument Avenue and further about the fact fifty-four percent of the school age – I think fifty-four percent or fifty-eight percent of the population was black at the time; that sixty percent was in the schools. In fact, the tax assessables were down and they had large welfare rolls in the city and that they were continuing to grow.

Q What was the purpose of the Commission? [212] What were you trying to do?

A The purpose of the Commission was to effect a merger with Henrico and Chesterfield Counties.

Q What was that supposed to serve?

A I think it certainly would have served to broaden the power base in the City of Richmond.

* * *

Q [216] Did you have an occasion to comment on the fact these three individuals were not there?

A Well, yes. I commented about that.

Q Did you comment to a city official?

A If I recall correctly, I think I talked with Mr. Conard Mattox, the City Attorney for the City of Richmond.

Q In reference to the fact that Carwile, Marsh and Carpenter were not there?

A Yes.

Q What was his response?

A I do not know whether it was his particular response. The impression that I had was that the reason the individuals were not asked is that they were troublemakers and would have been opposed to whatever was [217] going on.

Q Let us go back to the Williamsburg meeting. Can you enumerate who from the city in your memory was there?

A Mr. Conard Mattox, City Attorney; Mr. James Wheat who was a member of City Council at that time; Mayor Crowe was there. I believe Mr. Bagley was present. That is all I remember from the city.

Q From the county, sir?

A From the County of Henrico, Mr. Earl Dunn was present. I believe Mr. Beck is the County Attorney and the County Manager, that he was present from Henrico. From Chesterfield it was Mr. Horner. He is Chairman of the Board of Supervisors. Mr. Dietsch, who is a member of the Board of Supervisors, and he was in that affected area that later was annexed. Their County Attorney I believe was present.

Q Was Mr. Burnette there?

A Mr. Burnette was present, yes.

Q What was the Commission trying to accomplish in this meeting?

A In effect, a shotgun marriage.

Q What do you mean by shotgun marriage?

A They came down and all parties were present. We had a good round table discussion. Senator [218] Aldhizer and I informed them at the luncheon break to go out and draw up certain plans and let us have a compromise on what was coming to the City of Richmond. After lunch they came back with the compromise agreement.

Q Did you tell them what you would do if they did not?

A We would do it through legislation in the General Assembly.

Q Were you seeking to institute a long term program, or were you trying for something immediate, sir;

A Basically the Aldhizer Commission was interested in a long term arrangement. We wanted to have all of Henrico, possibly all of Chesterfield perform as one single unit of government in the Richmond Metropolitan area. This we thought would solve the problems for many years to come.

Q What was the problem, sir?

A The problem of the city, in the fact it was going black. The power structure and, you had large numbers of people on the welfare rolls and the question of taxes –

* * *

Q [219] When you say who controls, what do you mean? What political party controls or what? White or

black? Is that what you are saying, Mr. Pendleton? Who controls, the white or the black?

A I think this is the issue really.

Q What do you mean by boil it all down to [220] the essentials when you talk about welfare and tax?

A Well, power is something that any particular governmental community – You boil it all down, and that is the one controlling issue, who is going to elect and run the city or the county. Here the question is whether the blacks are going to have a hand in running the city or whether the present power structure in the City of Richmond is going to run it.

Q Would it be a fair statement that boundary expansion was going to prevent the blacks from taking control or having a hand –

MR. CROSLEY: I object to that question on the ground it is a leading question.

THE COURT: Overruled.

A Repeat your question.

Q Would it be a fair statement –

MR CROSLEY: I object on the ground it is an opinion and it is the issue at stake.

THE COURT: I think he can give his impression as to what the meeting was about. Overruled. Go ahead.

They have got my attention, Mr. Crosley. Go ahead.

Q Would it be a fair statement to say when you are talking about power that the intent to expand the [221] boundaries of the City of Richmond was to prevent the blacks from having a hand in governmental control or controlling at all?

A I say to have a majority control. That was the issue.

Q They stressed the 1970 Councilmatic, the upcoming Councilmatic election?

A Yes, sir, this was an issue, too.

Q What were they afraid of in the 1970 Councilmatic election as expressed by them?

THE COURT: If expressed.

A That a majority of the City Council of the City of Richmond would be bl[illegible]k.

Q Mr. Pendleton, once the Commission had had its meetings and presented legislation to the General Assembly, did you take an active part in that legislation?

A Yes, I did.

Q What was that part?

A It was my Constitutional amendment which I introduced on the House side. It was my Constitutional amendment which I introduced, out of the Committee on Counties, Cities and Towns, passed the floor of the House, sent to the Senate and later was adopted by the Senate and was an amendment approved in the first stages of Constitutional passage in the State of Virginia.

Q [222] Were you the floorleader?

A Yes, sir.

Q Were officials of the City of Richmond at the legislative Assembly in 1969 lobbying for the Aldhizer amendment bill to pass?

A Yes, sir.

Q Was Mr. Forb there?

A Yes, sir.

Q Was Mr. Bliley there?

A Yes, sir.

Q Was Mr. Bagley?

A Yes, sir.

Q Was Mr. Crowe there?

A Yes, sir.

Q Was Mr. Wheat there?

A Yes, sir.

Q Was Mr. Conard Mattox there?

A Yes, sir.

Q With whom did you have the closest contact in seeking the passage of this bill?

A Conard Mattox.

Q Did Mr. Mattox tell you why that bill had to pass.

A Yes.

Q Why?

A [223] That if it did not pass the 1970 election was right around the corner and the Constitutional amendment possibly could be put into effect prior to that.

* * *

7. Testimony of James G. Carpenter

[225] JAMES GLENN CARPENTER, called on behalf of the plaintiff, adversely, first being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Mr. Carpenter, would you state your name, age and address, please.

A James Glenn Carpenter, 3319 Haynes Avenue. I am forty-four.

Q What do you do for a living, sir?

A I am a Minister of the Gospel and Pastor of All Souls Presbyterian Church.

Q In the City of Richmond?

A Yes, sir.

Q Do you hold any elective office, Mr. Carpenter?

A I do.

Q [226] What is that?

A I am a member of the City Council of the City of Richmond.

Q When were you first elected, sir?

A 1968.

Q Were you recommended or endorsed by any organization in the City of Richmond?

A I was endorsed by several groups after I announced.

Q Did the Crusade for Voters endorse you, sir?

A Yes, they did.

Q Did the Crusade endorse you in the last election of 1970?

A Yes.

Q Mr. Carpenter, when was the first time you learned that there were private meetings being held between members of the City of Richmond, officials of the City of Richmond, and the Aldhizer Commission?

A I read it in the newspaper.

Q No one had ever told you prior to that there were meetings to be held?

A No, sir.

Q Do you know what the Aldhizer Commission was?

A [227] Yes, sir.

Q What was it?

A As I understand, it was a Commission appointed by the General Assembly that had the specific task with reference to the expansion of the city.

Q When was the first time you learned that officials of the City of Richmond were meeting with officials

of the County of Chesterfield in an effort to compromise the annexation case in 1968-1969?

A I don't know if I really heard of that until the case was in the Court.

Q How did you first learn of it?

A Again, through the newspaper.

Q In the newspaper?

A Yes, sir.

Q No member of the city government ever told you these meetings were going on?

A No, sir.

* * *

[228] I would have liked to have been a party to any meeting where Council was supposed to have been represented. I resent at least the statements that came from the press that the Williamsburg meeting, that there were persons from Council and the City Attorney who were representing Council. The problem I had with that is how could they represent Council when Council had taken no action? They did not represent me. I was on the Council.

* * *

Q [230] Has Mr. Bagley ever involved you in a conversation with him dealing with the purposes of annexation?

A He never had until this last weekend.

Q Where was that, sir?

A It was September 12, Sunday, at Virginia Beach, the Virginia Municipal League.

Q The Virginia Municipal League down there?

A Yes, sir.

Q What did Mr. Bagley tell you?

A He drew me aside and was giving me a summary of the speech he gave before some group in the city wherein he was expressing the feeling the city ought to go to Councilmatic elections, ought to go to parties, Democratic or Republican Party. And he was sharing a condensation of that speech, I assume. He indicated to me, he said, I had to do what I had to do concerning annexation, that I just did not believe the Niggers were qualified to run the city, and then he added, I just don't believe that Negroes are qualified to do that and ought not to be in that position.

Q Did he use the word "Niggers"?

A Yes, sir.

Q [231] The second word was "Neggra"?

A Yes. That was my understanding.

8. Testimony of B. Earl Dunn

[235] B. EARL DUNN, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q Mr. Dunn, for the record please state your name, your address and age, please, sir.

A My name is Bernard Earl Dunn, 7608 South Pinehill Drive, Richmond, Virginia, and my age is fifty-four.

Q Is that in the County of Henrico, sir?

A Yes, sir.

Q What business are you in, Mr. Dunn?

A President of Dunn Tire Service.

Q Do you hold any elective office?

A Yes, sir. I am a member of the Virginia General Assembly, House of Delegates.

Q Did you hold any elective office prior to being elected to the General Assembly of Virginia?

A Yes, sir.

Q What was that?

A I was a member of the County Board of Supervisors from January 1, 1960, until December 31, 1969.

Q Did you hold any position within the Board?

A Yes, sir. During an eighteen-month period I served as Chairman of the Board.

* * *

Q [236] Referring to the discussions you had with the members of City Council at this time, 1960-1961, what were their reasons as expressed to you for merging the County of Henrico with the city?

A Principally, the reasons given to us were that the city was becoming a city that was kind of run down [237] and becoming a city of the old people, the poor people, the black people.

Q Old, poor and the black?

A Right.

Q What did they stress, old, poor or black?

A I remember very generally that they stressed the aspect of the whole thing, but I think the emphasis was possibly placed on the black society.

* * *

A [239] The Aldhizer Commission, as I first came in contact with it, and with the members of the Commission, as I recall, was in Williamsburg, Virginia. That was in I think March, 1969, as I recall.

Q Who was at that meeting, sir?

A [240] There were representatives from the state, as members of the Aldhizer Commission, from the City of Richmond and the County of Chesterfield and representatives from the County of Henrico.

Q Who was there from the City that you remember?

A Mayor Bagley, Mr. Crowe, Mr. Wheat.

Q Did Mayor Bagley or Mr. Crowe or Mr. Wheat make any comments which you remember in which they discussed the racial problems of the City of Richmond?

A Yes, sir. Here again the same old statement cropped up about the city becoming the city of the very old, the very poor and the black. That came up time and time again. I mean, we should have made a record of the thing and just played it back I suppose to ourselves.

Q Did they go into deep statistics and information and involve you in deep conversations about the old and the poor?

A No, sir.

Q What was most of their conversation about?

A At this particular time the conversations that I had mostly with them dealt on the ratio, the white-black ratio of the voting strength within the city. I tried to recall the figures as nearly as I could and to try to point out I did not believe that the figures were very [241] close really.

A You say the figures were not very close?

A The voting ratio between the whites and the blacks in the City of Richmond.

* * *

9. Testimony of George W. Jones

Q [247] Mr. Jones, for the record would you state your name, age and address, please, sir.

A George W. Jones, age forty-four, 65 Goodward Road, Chesterfield County.

Q Mr. Jones, what do you do for a living?

A I am a life underwriter and sales representative, and also the House of Delegates.

Q You are in the House of Delegates?

A Yes.

Q When were you first elected to the House of Delegates?

A In the special election in 1969, January, 1969, I was elected to the House of Delegates.

Q [248] Are you familiar with an amendment, proposed amendment to the Virginia Constitution referred to as the Aldhizer amendment?

A Yes, I am.

Q Were you for or against it?

A I was opposed to it.

* * *

Q What was your basis of opposition, sir?

A The primary basis for my opposition to it was that it was unconstitutional in my opinion and the main thrust and purpose of it was to dilute the black vote [249] of the City of Richmond.

Q Did you so publicly state that?

A Yes, I did. I stated it on the floor of the House in my maiden speech.

Q Mr. Jones, did members of the legislature with whom you spoke concerning the Aldhizer amendment

express to you the basis of their support or nonsupport for the amendment?

A Well, yes. Originally I talked to several legislatures that I can recall right off that originally indicated they would support me in my opposition to the Aldhizer amendment but later came back to me and stated they could not oppose the Aldhizer amendment because they did not want to see the City of Richmond go all black and become another Washington, D.C.

* * *

Q [250] Those members of the House of Delegates were of whom you spoke. What was the primary basis of their support for the amendment as expressed to you?

THE COURT: Are you talking about members of the House who represented the city?

MR. VENABLE: No, sir. Members of the House first, Your Honor.

MR. DAVENPORT: I object, Your Honor. I don't think it is relevant to the issue here.

THE COURT: Overruled, Mr. Davenport. I am not quite sure.

A This main concern was manifested in the fact they had been apparently told this was their capital city, and they could not let it go black.

* * *

Q [253] Has your opinion been changed at all since the 1969 Assembly?

A It has been borne out in my opinion that my original feelings and beliefs, as a matter of fact, that this has been proven to me, to my satisfaction, through different occasions since then.

Q What are those occasions?

A One would be a meeting that was held at Willow Oaks Country Club in which certain city officials were in attendance. Another private meeting.

Q What was this Willow Oaks meeting? When was that?

A Willow Oaks meeting was held sometime in February, 1970.

* * *

Q [255] What did these officials of the City of Richmond and these other individuals you have mentioned, tell you that, as you say, bore out this opinion of why annexation or the Aldhizer amendment was undertaken?

A Well, Mr. Henry Valentine at the beginning of the meeting stated that the purpose of annexation was to keep the city from going all black, and since this had been accomplished he knew there were ill feelings but he thought we all ought to heal our wounds and get together.

Q Did he say why you ought to get together?

A There was further discussion around the table, and I believe it was Mr. Nathan Forb that brought up that we should get together to keep the City Council from going black.

* * *

A [256] The second occasion was either in November, December or the very first part of January, prior to this last immediate session of the General Assembly in which I had a luncheon engagement with Mr. Bill Deniel. He [257] was acting as legislative representative for the City Council.

Q Is he on Council?

A Yes. He is on City Council. We met at his office in the Fidelity Building, where the Metropolitan Bank is located. We went upstairs for lunch and initially discussed the financial situation of the City of Richmond where they were trying to get through an additional one percent local option of a sales tax.

During the course of our luncheon engagement we got to discussing the City of Richmond as it currently stands. He pointed out to me that Richmond was not interested in the rest of Chesterfield County, but they felt they had to have all of Henrico to prevent it from growing all black, becoming like Washington, D.C.

MR. VENABLE: No further questions.

10. Testimony of Roger C. Griffin

Q [266] Mr. Griffin, for the record will you state your name, age and address, sir.

A My name is Roger C. Griffin, Jr. I am fifty years old. I am a resident of 9601 North Ridge Court in Richmond.

Q Within the City of Richmond, sir?

A The present city boundaries, in the annexed area.

Q What do you do for a living, sir?

A I am employed by Reynolds Metals Company. I am a professional chemist and author and I am in the capacity at Reynolds Metals Company as Manager of their Paint and Films Laboratory in the Packaging and Research Division.

Q Mr. Griffin, in February, 1970 did you have an occasion to go to a meeting with city officials at Willow Oaks Country Club?

A Yes.

* * *

Q [273] Would you indicate where on your notes the statements are and who made them.

A The place lettered with a capital B. To the right of that the designation is capital letter B. There are the initials H.B., an arrow and then some abbreviated language.

Q What is the H.B.?

A That was my note for Henry Valentine. I misinterpreted the name. I thought it was Balentine. H.B. instead of H.V. The shorthand notes, for clarification, R.F., Richmond Forward and then to the right of the doodle, keep city F.R., from, turning and the letters B.L. for black.

Q Do your notes indicate any other statements of the officials of the City of Richmond?

A If you go a little beyond halfway down the page where there is a circled capital letter C, Councilman [274] Forb, don't want Richmond become another Washington, D.C.

Q Does that refresh your memory as to what he meant by Washington, D.C.? Did he designate what he meant by that?

A I can't give you exactly his words but the intent of what he said was, we do not want Richmond becoming controlled by the black citizens the way Washington, D.C., has become.

Q Do your notes indicate any other statements that were made?

A Under the letter E, the lower left–I have tried to remember. I don't recall who in the room made this statement, but it was made by either one of the city officials present or by one of the other people of the

Richmond Forward group, but I jotted this down. The issue is, how to stop government by the have nots rather than the haves.

Q Did anybody explain that? Did they identify–

A It was not specifically stated who they are but it was generally agreed within the room I think without stating who, who they were referring to.

Q Who was it?

A They were referring to the poor people [275] of Richmond and specifically to the black citizens of Richmond.

11. Testimony of George K. Talcott

Q [306] Would you please state your name and age, please, sir.

A George Russell Talcott, age fifty-three.

Q Mr. Talcott, you are presently employed by the City of Richmond?

A That is correct.

Q In what capacity?

A I am an assistant to the City Manager.

Q When were you first employed by the city?

A I was first employed by the City of Richmond in 1962.

Q In what capacity was that?

A At that time the job title was Boundary Expansion Coordinator.

Q In that position was it your function to work, prepare exhibits, coordinate efforts for the two annexation suits under way against Chesterfield and Henrico County?

A That is correct. That is a correct summary.

* * *

Q [319] It is true, is it not, Mr. Talcott, that from October, 1968, up to the time that you were called upon to develop information on the Horner-Batley line, no one other than the attorneys made any request of you for information. Isn't that true?

A To the best of my recollection it could have been a casual question about this, how the case is going on, from most anyone.

Q But you were not called upon? You had no recollection of being called upon by anyone with the request, such as, let me have some information with respect to the annexation matter?

A I have no recollection of the development of any special information from a request, as you have described.

Q Do you have any recollection of Mr. Bagley's coming to you and asking for development of such [320] information?

A Yes, he did.

Q When was this?

A The exact date of the memorandum I believe is June 9, 1969. This was probably the day before that.

Q It is true, is it not, Mr. Talcott, when Mr. Bagley made his requests upon you he was asking your office for information with respect to a line that had already been drawn?

A Yes. That is correct.

Q This was what is now known as the Horner-Bagley line. Is that correct?

A Correct.

Q Did you furnish any information to the attorneys on a possible compromise prior to being called upon by Mr. Bagley for information on the specific line?

A I provided information of a financial nature, several weeks before the request from Mr. Bagley.

Q This too, sir, was in connection with the line itself, was it not, from trying to work out the figures, a formula, a price tag, to pay for the property?

A Yes. The major part of an annexation case is the financial terms and conditions.

Q Other than that, did you furnish any information to the attorneys dealing with the compromise?

A [321] A great deal of information was provided, yes.

Q Prior to being asked to provide information dealing with the Horner-Bagley compromise, were you called upon at any time by the attorneys to furnish you information on a compromise area?

A Not on any other compromise area, no.

12. Testimony of Thomas J. Bliley, Jr.

Q [330] Mr. Bliley, may I call you Mr. Bliley–

A Fine with me.

Q Would you state your name and your age for the record.

A Thomas Jerome Bliley, Jr. Thirty-nine.

Q Mr. Bliley, you were first elected to City Council in 1968, and you were Vice Mayor, reelected in 1970, and you are now Mayor of the City of Richmond?

A That is correct.

* * *

Q [334] Mr. Bliley, are you familiar with some reports received from John Ritchie of Richmond Forward which analyzed the 1966 and 1968 Council-matic elections, precinct by precinct, and gave a pretty detailed analysis?

A I am not familiar with the 1966, but certainly I have received a report in 1968.

Q It broke the precincts down pretty well and told you how each had voted and how everyone had fared and had a considerable emphasis on the race, whether the precinct was all black, whether it was mixed, whether it was white.

A That is right.

Q Do you know who instructed Mr. Ritchie to prepare such a report?

A No.

Q Do you know if this report was made available to all members of Richmond Forward who were elected to the Council in 1968?

A No. I don't know for a fact whether it was. I assume it was since it came from their office and was mimeographed.

* * *

Q [338] How about the opposition on Council to the Aldhizer amendment?

A What do you mean?

Q Two opposed it on City Council.

A I believe the vote was six to three, Messrs. Carpenter, Carwile and Marsh opposing the motion.

Q The three members elected by the Crusade for Voters, supported by the Crusade for Voters, opposed the Aldhizer amendment?

A That is right.

Q Why?

A You would have to ask them.

Q What did they tell you?

A [339] They said in the discussions, I believe they said the purpose of the Aldhizer amendment was to dilute the black vote.

Q In the discussions they told you this was their feeling.

A That was their feeling which they are entitled to.

* * *

Q [340] The question, Mr. Bliley, was at least at that point in 1968, surely you and every other member of City Council were well aware of the position taken by these three Crusade supported Councilmen, namely they opposed the Aldhizer amendment on the basis it diluted the black vote.

A In their opinion.

Q Isn't that correct? That was the basis for their opposition?

A That in their opinion, that it diluted the black vote, yes.

* * *

A [347] I never had any discussions with Jim Wheat about anything until I announced for Council.

Q When did you announce for Council?

A Sometime in late March or early April of 1968.

Q It was after that that you had occasion to discuss at length with Mr. Wheat annexation?

A I did not ever have any lengthy discussion with him other than from time to time, but I believe the city had to expand and I told him so. He knew it. He felt similarly.

Q Specifically, was it not yours and Mr. Wheat's concern—He is a member of Richmond Forward, is he not, incidentally?

A Yes, sir. He was a member of Richmond Forward.

Q And he had been elected to the Council several times as a candidate by Richmond Forward?

A That is right.

Q It is true, is it not, that after you had announced for an election in 1968 that you and Mr. Wheat had occasion to express your mutual feeling that if Richmond Forward did not gain control of Council in the election of 1968 that the annexation suit against Chesterfield [348] would be dropped?

A Yes.

Q You talked about that?

A Yes, sir, publicly, on a platform.

Q The only voter group opposing Richmond Forward of any significance is the Crusade for Voters, is it not?

A That is right.

Q Then your concern was that the Crusade for Voters may elect a majority to Council in 1968 and may simply vote to drop the annexation suit?

A That is correct.

Q That concern existed in 1968 and it was even more aggravated as one approached the 1970 Councilmatic election unless you had annexation? Isn't that true?

A It might be. Yes. I would say that it would be a terrific concern, yes.

* * *

Q [349] Mr. Bagley told you about it?

A Yes. He told me that he was meeting with [350] Mr. Horner from time to time.

Q Did you know for a fact he was not telling the three members of the Council supported by the Crusade?

A I never heard him say it, but I would say that would be a valid assumption.

* * *

Q So he had the approval of those six? I mean, Mr. Bagley was not out there negotiating as a guy. He was negotiating on behalf of the City of Richmond?

A I don't know that—Yes. I would say he was out there representing the six. I don't think he was negotiating. He was going out there, hearing what he had to say and coming back.

* * *

Q [356] This information that you wanted was not available at this meeting, was it? It had to be gotten later?

A Mr. Talcott said he would get the information. Some of it he had, but of course obviously he had to get some of it.

Q Isn't it true that about the only definite fact you knew at this meeting was that you could see the line and you knew the number of people. That is a true statement, isn't it?

A That is right.

Q Mr. Bliley, with respect to the Willow Oaks meeting about which you have heard some testimony today, the purpose of this meeting was to discuss the joining of forces of Richmond Forward, or some group composed of Richmond Forward with people from the annexed area known as T.O.P.?

A Yes, sir.

Q [357] Is it fair that within that purpose the primary purpose was to prevent a takeover of the Richmond City Council by the Crusade for Voters?

A The primary purpose was to win the election and elect a majority to Council.

Q Do you recall that discussion ensued to the effect that if the annexed people did not join with you the Crusade would takeover Council?

A I specifically remember discussing the point that they had three options. One, they could go it alone. Two, they could join forces with the Crusade or three, they could join forces with us.

Q The answer?

A The question?

Q Do you remember any discussion to the effect that if you, the people of the annexed area, don't join with us, there is the chance the Crusade or the black vote could gain a majority of City Council?

A That the Crusade elect a majority of the Council, yes. I think that was discussed.

13. Testimony of Phil J. Bagley, Jr.

Q [385] Would you state your name and age for the record, please.

A Phil J. Bagley, Jr. I am sixty-seven years old.

Q Mr. Bagley, how many years, total years, have you served on the City Council of the City or Richmond?

A I served sixteen years on the Council. Two years I was off, but a total of sixteen years.

Q Between 1960 and 1962 you were off?

A 1961 I was off.

Q Other than that, the years have been consecutive?

A Continuous, yes, sir.

Q You did not seek reelection in the 1970 Councilmatic election?

A That is correct, sir.

Q Mr. Bagley, were you ever Mayor of the City of Richmond?

A Yes, sir. I was Mayor and I was Vice [386] Mayor for two years and Mayor for one term. I served on the Planning Commission and various other committees during the course of the sixteen years.

Q You are pretty familiar with city government, is it fair to say?

A I would like to think so.

* * *

Q [394] That particular election, there were no overlapping endorsements. The Crusade did not support any of the six Richmond Forward candidates elected, and Richmond Forward did not support any of the three candidates elected by the Crusade. Is that your recollection?

A I think that is a matter of record, yes.

Q So at least from this exhibit we find there are three candidates on City Council, Messrs. Carpenter, Carwile and Marsh, elected by the Crusade for Voters.

A Yes, sir, that is right.

Q We can establish, can we not, the Crusade is predominately a black voter organization. Do you agree with that statement?

A Out of the three they supported two were white candidates.

Q I think my question was, though, it is primarily a black voter organization, that there is testimony in the record to that effect. Of course, you are not bound by it. Would you refute the fact that the Crusade for [395] Voters is a black voter organization?

A I think it is a major black vote organization.

Q Despite the fact they have from time to time endorsed white candidates?

A That is right.

* * *

A [423] I reported back to those interested in our boundary expansion.

Q The question is, you did not tell Messrs. Carwile, Marsh, Carpenter?

A No. They did not show any interest.

Q They were not entitled to participate in this decision?

A They were entitled to participate if they wanted to. They could work against it.

Q How could they participate when they did not know what was going on?

A They could work against boundary expansion with the Supervisors if they wanted to. I was working for it. It was two different approaches.

Q They did not even know what was going on between you and Mr. Horner.

A They could not know that. They could go and see the Supervisors like we did and talk against any expansion of boundaries.

Q Weren't they entitled to participate in this decision making process, Mr. Bagley?

A It was not a question of whether they were entitled. They were entitled to do anything they wanted. I was entitled to do anything I wanted, that I thought was for [424] the betterment of Richmond. I did it.

Q You were an elected representative, and in that capacity you were talking with Mr. Horner who was a representative of Chesterfield County.

A That is right.

Q You were trying to reach an agreement on a compromise. Correct?

A That is right.

Q In this connection, when you saw the views of members of City Council, you deliberately excluded Messrs. Carpenter, Carwile and Marsh from developments, didn't you?

A That is what you said. I excluded them. I would say rather that I included in the discussion those who were interested in boundary expansion. I was having enough trouble with Mr. Horner. It was not any use in bringing in those opposed.

Q They were sort of excluded by not being invited?

A That is your way of putting it.

Q What is your way?

A That I included those who were interested in boundary expansion.

14. Testimony of A. Howe Todd

Q [476] Mr. Todd, would you state your name.

A A. Howell Todd.

Q Where do you live?

A 1600 Wilmington Avenue, the City of Richmond.

Q What is your background as far as academic training in leading up to your specialty in City Planning?

THE COURT: Mr. Edwards, Mr. Todd is already qualified in this Court as an expert. Counsel may examine him on the voir dire.

MR. ALLEN: We will accept that.

MR. EDWARDS: May we say for the purpose of the record, just substitute his school, whatnot,

without asking the question? That is, so the record would have it.

THE COURT: All right.

MR. EDWARDS: Thank you, sir.

Q What positions have you held in the Richmond Metropolitan community since finishing college?

A I have been the Executive Director of the Richmond Regional Planning Commission and am now the Director.

Q [477] When did you serve on that?

A 1958 to 1960.

Q Go ahead.

A I am now the Director of Planning and Community Development for the city.

Q Were you with the city at the time the question came up as to whether it should undertake to expand its corporate boundaries?

A Yes, sir.

Q What part did you play in that?

A As the Director of Planning at that time I gave advice to the city administration. I was in favor of annexation and recommended it.

Q What were your reasons on the advice that you gave and why did you favor the annexation?

A I felt that the City of Richmond was in great need of expanding its boundaries.

Would you like me to develop that point?

Q I wish you would.

A All right, sir. Well, for over two centuries the City of Richmond has grown through annexations of one kind or another. The needs for the continued expansion of the city existed in 1960 and recent decades, and in the nineteen hundreds, I would say

there has been some change in the emphasis of the need but maybe an increasing need for [478] the city itself as well as just solving the problems of the area sought. But with the city hidebound by the corporate line that had been established seventeen years prior to this time with a considerable spill over of urbanization beyond the corporate line the city faced a seizure of stagnation and deterioration.

There were serious problems the city faced if annexation did not occur. The most physical, obvious, tangible, reason for annexation is the urgent need for additional vacant land. There is a serious shortage in the City of Richmond for vacant land. It is needed for housing. There should be a choice of housing types as well as a choice of sites on which to build housing.

Land was needed to allow expansion of commercial and industrial development. Land was needed if redevelopment and renewal were to in fact occur. Land was needed if there was going to be a growing tax base of the City of Richmond. Smoke stacks, industries, businesses are needed. They are very important and without the land available on which this development could occur the city is somewhat ham strung.

* * *

Q [487] Do you know whether any businesses were moving out, failing to expand within the city?

A Yes, sir, not only was there no new land for growth but in fact some of the industries because they were in old three story or loft buildings, they were looking for and moving to sites usually in the county areas where they could have modern plants, use of the fork lift and more space for parking, etc. I can

remember that I wrote a letter to the City Manager in 1968 listing a whole list of some twenty-four to thirty industries that have left the city because of this reason.

* * *

Q [491] Were there any other considerations other than vacant land that prompted you to make the recommendation [492] and was used in your judgment in fashioning the area to be taken other than vacant land?

A Yes, sir.

Q What was one of those?

A Another need for annexation was to recapture the spill over that had occurred across the corporate line. In fact, the City of Richmond was in the old corporate limits no longer included the real city. The automobile, for one thing, had caused this suburban expansion and there was a great deal of urbanization that had occurred since the last annexation. In the land immediately adjacent to the city but in both counties.

Quite frankly, I think the city expected that the slower this urbanization occurred the more urban it became and maybe the easier annexation might be when it was requested. The city had expected and anticipated annexation as it had done through the years as its form of growth.

If I can now turn to the next chart, please.

Q This will be D 34.

A D-34 is entitled, Richmond Metropolitan Population Trend. It shows the population growth of the Richmond Metropolitan area. This black line includes Richmond, Henrico and Chesterfield. It also shows in yellow the population growth through the decades from

1920 to 1970 [493] of the City of Richmond. I had mentioned the effect of the automobile. Right after World War II, especially when mortgage money was cheap and the G.I. bills, etc., were available, this being 1942, and the World War II in this area, you can see the very rapid explosion in the suburbs and the counties grow and the city in fact in the 1950s, from the 1950s on, begins to lose population.

These statistics are very significant, I think, in representing what took place. From 1900 until 1942 annexations were able to keep up with the suburban development. One hundred and twenty-nine thousand out of one hundred thirty-two thousand population growth in the Metropolitan area occurred in the city with only two percent of the growth from 1900 to 1942 occurring in the counties. But, from 1942 to 1968 just the opposite happened. When out of an additional two hundred twenty-two thousand people, population expansion, only two thousand occurred in the city. The remainder, the two hundred twenty thousand being reflected by the difference in these two lines in the latter decades of the draft.

All of this growth, we analyzed with our population spot maps and subdivision plat and found that in fact it was occurring adjacent to the city. We called it spill over by common termanology. From 1942 to 1968, the time of the Chesterfield annexation case, eighteen thousand [494] four hundred seventy-five residential lots were created within the five mile limit of the city. You will recall the five mile limit as the area within which the city has joint subdivision control. While only three thousand two hundred ten residential lots had been created within the city. Eighteen

thousand against three thousand. In the last eight years from the time of the annexation ordinances to the time of the case, only one hundred sixty-three lots were created within the city. In the last year, 1967, only twenty-seven lots. While in the county five thousand residential lots were established. This shows the swinging of the pendulum at this point with the mushrooming of the suburban area adjacent to the city and the falling off of the population growth within the city.

This is a very serious situation to a planner. It is serious because the city should in fact represent the true city, not just a portion, a part that is not representative. If I could have the next chart– Incidentally, from 1961 to 1968 while these lots were being created population was added to the annexed area equivalent to the size of the City of Charlottesville to show the rapidity and the speed of the urbanization taking place.

* * *

[502] Mr. Edwards, the other reason if you would like–

Q Go ahead.

A I have two or three other very brief statements. We are speaking to the needs and reasons for annexation, and I feel one of the reasons would be to correct the inequity and unfairness that does in fact exist. This is one social and one economic entity. I am not speaking to the city's limits but to the spread city affected by the automobile.

Because someone moves to our community and finds the home of his liking maybe two or three blocks

beyond an annexation line of some previous annexation Court, to me that does not say at all that he has no responsibility [503] for the welfare or the housing, the construction of public housing or the airport or the main library or many of the other central city expenses that show in fact be borne by the total community. Conversely, there are problems in the county that I think city residents equally should share in finding the solution to. I think there are people living in the counties that are interested in helping to make political decisions as to what should or should not happen in this community. They are involved and yet under the fractionated government can have no say.

Q Do you know the number of people in Henrico that make their living in Richmond or have their job in Richmond?

A The number of people, I don't know.

Q The percentage of those who have their jobs in the city? Do you recall?

A It was sixty-five percent if I recall.

Q Do you recall as to Chesterfield?

A No, sir.

15. Testimony of Alan F. Kiepper

Q [530] Mr. Kiepper, would you give us your name, please.

A Alan Frederick Kiepper.

Q Where do you live?

A 409 Henri Road.

Q In the City of Richmond?

A Yes, sir.

Q What is your present position with the city?

A I am the City Manager.

* * *

Q [531] Will you piease tell us why Richmond needed to expand its boundaries with reference to this annexation case in Chesterfield.

A Yes, sir. I think there are three.

Q Did you testify in that case?

A Twice, both trials.

I think there are three principal reasons why Richmond needed to expand its boundaries: The first of these dealt with the population imbalance that was occurring in the City of Richmond to which Mr. Todd has testified. The city was becoming a place of the very old and the very poor. It was losing its young affluent, what I called the leadership group. The reasons as I see them why this was so are those pointed out by Mr. Todd, housing, cheap land was in the suburbs. It was not available in the city and the automobile contributed to this.

This was resulting in a very serious population imbalance in the city. It is illustrated, for example, by the medium family income figures from the 1960 [532] census which showed the medium family income in Henrico and Chesterfield was $6200.00 whereas in Richmond it was only $5200.00 or twenty percent higher in the suburbs.

As has been pointed out by exhibit D 44, seventy-six percent of the families in the city, of the families in the Metropolitan area, with incomes of less than $3,000.00 were living in the city. Only twenty-four percent lived outside the city limits. This was

resulting in a number of things happening in the city. One of which was an increase in the cost of government, a very dramatic increase because the older and poorer families that were being left in the city were demanding more from the city government in a number of ways.

We were also losing a very key element in any community, what I would characterize as the leadership group, the owners of businesses, the young executives, those that normally play very, very vital roles in the life of a community. Much of our business was becoming absentee owned, but did not have a residence here. That is a bad situation in my judgment.

So this population imbalance with the poorer, those people requiring governmental services in the city, those more affluent contributing type citizens moving outside the city, this was causing several problems with potentially even more severe problems for the city.

[533] The second major factor to which Mr. Todd has also testified was the need for vacant developable land. He has pointed out that it had declined to six point four percent by 1968.

Some reference was made to the fact that firms were moving outside the city. I did ask Mr. Todd in 1968 to get me a list of firms, businesses, industries, that had formerly operated in the city that had moved out to surrounding counties. He provided me with a list of twenty-four such companies that he documented had in fact moved. He contacted a number of them and found that absence of land was certainly a major item.

* * *

[537] The third reason which I have alluded to previously on which I would like to elaborate. It has to

do with the increasing cost of government. This relates directly to the changing character of the population. We find expenditures for public health, public welfare, police, recreation, education, all have expanded and to a large extent these increases are directly related to the growth of low income population. I would like to refer to exhibit D 46 which is here on the easel which shows the increase in general fund expenditures from 1950 to 1970. Then on exhibit [538] 47 which refers to the increased cost of education. Also chart 46, the increased cost of police protection. Also in particular chart 49, the increased cost in public welfare expenditures. These have shown a very dramatic increase. In fact I would like to point these figures out to the Court on city exhibit D 45 which is in the blue binder which shows that during the period from 1960-1961 through 1969-1970 that the cost of public welfare in Richmond went from five point six million to seventeen million.

MR. VENABLE: Your Honor, not to interrupt the witness but there are no headings on this six columns of figures. I don't know exactly where he is.

THE COURT: Can you find that?

A I believe that was corrected and the columns were added. Mr. Talcott will give you a copy.

NOTE: Mr. Venable is presented with a certain paper writing.

A I am referring to the column on the right, Mr. Venable, which refers to public welfare expenditures.

Another factor in annexation or in the need for annexation involves examining what is happening to other central cities which are not able to expand. The facts [539] regarding land, such as Newark, Cleveland

and Boston are well known to people in the field of local government and those who have an interest. These cities are having great difficulty in financing government, retaining business. By looking at them, and from our experience, and for a longer period of time, I think we can reasonably see what is likely to happen in our own city. So in view of these facts it seems to me that there certainly was ample justification and motivation to move toward annexation.

As a matter of fact, had the city not done so in light of the experience of other cities, in my judgment, the officials could have been judged irresponsible.

* * *

Q [542] What effect did the increasing and the low income minorities in the aged population have on the city, and one thing further, and the decreasing of the middle class and the young white population?

A As I pointed out, there have been—The increase in the cost of government which is associated with the kind of problems that are found among low income population. I see this as not so much a matter of the particular color of the individual as it is what the specific characteristics that the low income population have. In other parts of the country the same conditions occur among low income Puerto Ricans in New York, low income Mexicans in Los Angeles, so that it is a problem associated with a low socio-economic level and not necessarily with the color of the individual involved. There is an important distinction to be made here, I believe. A very important distinction is to be made. What we are dealing with is the manifestation of the low income person in terms of governmental

services and not in terms of [543] color, for color's sake.

Q What would be the effect on the city if action were not taken to attempt to remedy these problems as you have related them?

A It is perfectly obvious that if the trends toward an increase in low income, dependent people, continues, and the more affluent continue to move out of the city, that the costs of government in the city and the resources available in the city to pay these costs are going to result or could conceivably result in fiscal bankruptcy.

I can illustrate with the City of Newark which now has thirty percent of its population receiving public welfare assistance. It is currently facing a $70,000,000.00 budget deficit in the current fiscal year. Newark is a city which is approaching social and economic bankruptcy. It is a city which has been land locked and has lost the overwhelming majority of its affluent middle class citizens. So that we must we conscious of the trends in other cities and apply these trends to our own situation in Richmond and react in an intelligent and forward way.

* * *

Q [573] But you had had occasion to talk with most of the other six members of Council, had you not, Mr. Klepper?

A My dealings at that point were almost exclusively with the Mayor in terms of providing him with factual information which he requested.

Q At that meeting only?

A No, no, not that meeting. I am talking about during the latter stages of the Horner-Bagley negotia-

tions. I was asked, please supply factual information about this particular area. This was done. So I do not know the extent of the communication between the Mayor and the majory of Council with the three minority members. I cannot say whether they were or were not involved as of that stage.

Q Is your testimony that prior to the Horner-Bagley line being finalized you were giving information to Mr. Babley?

A By finalize, I did not get into the negotiations until a line had been agreed upon.

Q But is that what you said in your prior answer? Wasn't your prior answer that you had been giving Mr. Bagley information all along?

A No, it was not. My prior testimony was that once the area had been determined–

Q I see.

A [574] I was asked, please supply information about this. There was a period between the time the line was determined and the time that it was made public. It was during that period of time that we were supplying factual information.

Q Right.

A But I was not a party to the determination as to where the line should be.

Q You did not give Mr. Bagley any information, any you do not have any recollection of anybody on your staff giving Mr. Bagley any information prior to that line being determined, do you, Mr. Kiepper?

A Not in detail about that particular area. Our principal participation was after the line was determined.

* * *

Q [586] And to me, that is saying that unless we get annexation our city could go bankrupt. I may not know much about economics but correct me, isn't that economics? Isn't that saying–

A Mr. Allen, that is not the only thing I said. My first point was, and the major point I tried to make, was be concerned for population imbalance.

Q I don't mean to say that it was your personal opinion, Mr. Kiepper. I am saying that you emphasized in this Courtroom yesterday that the paramount problem was economics. Isn't that a fair statement of your yesterday's testimony?

A I have tried to explain, Mr. Allen, the problem of population imbalance and economics are just inexorably entwined. You cannot completely separate them. This is not a matter of taking each problem and putting it [587] in a little box and tying it up and saying this is all by itself. Economics is tied to people because people earn income. People pay taxes. People depend on municipal services. So the two are related.

A city is composed of people, not just economic forces in some sort of limbo, interaction of people, and their income, and the way they consume public services, the total service is the impact on the community and the impact on city government.

16. Testimony of Nathan J. Forb

[707] BY MR. DAVENPORT:

Q Will you state your name and address, please, Mr. Forb.

A Nathan Joseph Forb, 402 Harland Circle, Richmond, Virginia.

Q What is your business?

A I am Chairman of the Board of the Republic Lumber and Building Supply Corporation.

Q In Richmond?

A Yes, sir.

Q Are you a member of the Richmond City Council?

A Yes, sir.

* * *

Q [717] Would white resources and the white material have anything to do with that?

A People.

Q People. White people?

A To expand the city boundaries, sir.

Q But white people?

A Absolutely.

17. Testimony of James C. Wheat, Jr.

Q [34] And you were against compromise, weren't you, Mr. Wheat?

A Yes, sir.

Q Against the compromise because it didn't give the City enough vacant land?

A That is correct.

Q Did you make your views known at this meeting?

A I do not know whether I made them known at this meeting, but I made them known at a later get-together when I was asked to meet with some of the Council.

Q I see.

THE COURT: I take it you were not on Council at this time?

THE WITNESS: No, sir. I went off in March '69, sir.

THE COURT: That is what I thought. I wasn't sure.

[35] All right, sir.

BY MR. ALLEN:

Q And who agreed with you, Mr. Wheat, that you could now recall that the compromise was inappropriate because it didn't give the City enough vacant land? Do you recall anyone on Council agreeing with you? Let me ask you that question.

A I do not recall anybody on Council.

Q They all disagreed with you?

A I don't say they disagree with me. I just don't recall the positions of the various men on Council at that particular point in time.

Q Okay.

Do you recall discussing with them and pointing out why you didn't think the City had enough vacant land?

A No, not as to the specifics of it, no, sir.

Q Okay.

Well, did you point out generally then what your objection was?

A As I recall, my major objection was the question of vacant land and the late stage of the annexation suit. Also the question of the financial settlement which, to me, has been important in all of these transactions.

Q I see.

[36] Never convinced you, did they, Mr. Wheat, that there was enough vacant land in this annexed area, did they?

A I don't recall they ever convinced me there was enough. I am not sure what enough is.

Q In your opinion at the time there wasn't enough elbow room for the City, is that correct?

A This was not the only point in my opposition.

I say my opposition was based on the line, so-called, that was produced. The vacant land. Secondly, it was because it seemed to me that the Court decision was imminent. And two of the three things that I started working for in 1965 had been dissipated.

Q In other words, the money had been spent, the antagonisms had been raised, and it was too late to come up with a salvage job on those two and the only conceivable reason to compromise was to avoid the prohibitive award from a cost standpoint?

A Well, this is your statement, sir.

Q Well, is it a fair summary of yours?

A No. My statement is that I would have opposed it because of land, basically. But it also was because of the cost having been dissipated and the discord having been created. But basically it is a question of land.

18. Testimony of Leland Bassett

[164]BY MR. VENABLE:

Q Mr. Bassett, for the record would you state your name, age, and your address, please, sir?

A My name is Leland Bassett, 6601 Greenvale Drive. I am 33.

Q Mr. Bassett, do you hold any position in a political organization at the moment?

A Yes, I do. I am a member of the Executive Committee of the Team of Progress.

Q In 1968, specifically in the fall of 1968, were you a member of any civic association, and if so what was it?

A [165] I was a member of the Westlake Hills Civic Association. I was one of the members of the Board of Directors.

Q Are you familiar with Mr. Phil J. Bagley? Do you know who he is?

A Yes, I am.

Q In 1968 did Mr. Bagley, to your knowledge, hold a political office?

A Yes, he did.

Q What was that?

A I believe he was Mayor of Richmond.

Q When was the first time you met Mr. Bagley?

A In the fall of 1968.

Q How was he introduced to you?

A We were seated next to each other at a football game in Charlottesville and we introduced ourselves to each other.

Q Did he introduce himself as the Mayor of the City of Richmond?

A I don't specifically remember if he made mention of that, but I was knowledgeable of who he was and if I am not mistaken he may have even had a name tag on.

Q Did you engage him in conversation, sir?

A Yes, I did.

Q [166] Did you have occasion in that conversation to discuss annexation?

A Yes, I did.

Q Specifically the annexation of Chesterfield County by the City of Richmond?

A Yes.

Q Was the suit going on at that time?

A I don't recall whether the case was actually in court at that time or whether it was about to go to court.

Q What was your conversation about?

A Our conversation generally was in relation to our civic association. We were involved in setting up a meeting in which to discuss the pros and cons of annexation and it was my job as a member of the Board to find two speakers, one to speak on behalf of the City's position and the other to speak against annexation.

Q Your civic association, was that in the annexed area?

A That is correct.

Q All right. Continue, sir.

A So I thought it was an excellent opportunity to see if Mr. Bagley would speak on behalf of the City and I approached the subject with him. He indicated that he would be happy to speak at our association provided the date that we [167] had set on our calendar did not conflict with his schedule.

He suggested that I check with his secretary on Monday morning to see if it would fit into the schedule.

Q All right.

Mr. Bassett, during this conversation with Mr. Bagley, with Mayor Bagley, did you have an occasion to discuss racial percentages in the City of Richmond and any trends of racial percentages in population?

A We didn't speak specifically of trends and racial percentages in Richmond per se, but we discussed the

annexation issue in general and somehow the conversation got around to the City of Washington, D.C.

Mr. Bagley indicated that he had either gone to college there or lived there 20 or 30 years ago and made mention of the fact that he was somewhat shocked to see the great shifts in racial trends that had taken place between the time he lived there and the present time. That was 1968.

Q Growth of the black people in Washington, D.C.?

A Primarily, yes.

Q Did he equate the growth of black people in Washington, D.C., to a similar growth in Richmond, Virginia?

A Not specifically from that statement to another, no.

Q Was that your—was that the sense of the [168] conversation, though?

A The general sense. The implication that I drew, let's put it that way.

Q Could you have drawn any other implication?

A I don't believe so.

Q Did the Mayor tell you what was going to happen in Richmond?

A Well, he made one statement which I guess more or less would answer that question. His statement to me shortly after the conversation about the Washington aspect of our conversation, he made a statement, as best I can remember, something to the effect, "As long as I am the Mayor of the City of Richmond the niggers won't take over this town."

Q Did he use the "nigger"?

A Yes, he did. I specifically remember that.

* * *

19. Testimony of Henry L. Marsh, III

[174] BY MR. VENABLE:

Q Mr. Marsh, in the course of this trial Mr. Todd and Mr. Kiepper have talked about the reason for annexation was that it was necessary to annex to serve and solve Richmond problems. Do you agree with that statement?

A No, sir. I do not.

Q Why not, sir?

A Well, I think that it has been obvious that the reasons for the annexation were to dilute the black vote as well as some other things. And I do not think the problems would be solved by annexation, as I testified on direct examination. I think there are other ways of solving the problems.

* * *

[179] So annexation, in my view, without changing the [180] priorities, would make the situation worse, not better.

Q Can you tell us, Mr. Marsh, if you know of anything about the amount of industrial land the City actually got down in this annexation compromise?

A Well, I think the timing of the annexation, if nothing else, reveals the purpose. The annexation was—the trial was shortened. The timing was staged as a way to head off the 1970 elections.

The trial was going on and there was no way the annexation could have been finished because in Virginia they are only final on the first of the year, in time for the '70 elections. So unless a compromise was worked out to get that compromise the City had to give up the vacant land and the vacant land was in the part of the

annexed territory that was rejected and not in the part that was granted, the substantial vacant land.

The industrial complexes were in the part of the annexed territory. Part that was being sought was rejected, that was turned down. For example, there was a prime piece of industrial land at the tip near Dupont. That was given away. In addition to Dupont being given away in order to get the compromise into effect. There was about 100 acres of prime industrial land with some industries already on it and the line ran around along Walmsley Boulevard and [181] missed that entire piece of property.

Now, if the City had been concerned about getting industry or land suitable for industry they would have included that in the proposition. That was given up.

In the master plan deliberations, the only industrial site that was zoned in the new master plan was a little tip which is about four or five percent of the entire area.

The rest of it was zoned for housing and commercial, but primarily for housing. Very little industrial land in the award. And most of the prime vacant land was in the part of the territory sought that was legt within the County. So I don't think the request for vacant land was the cause. Otherwise the compromise award would not have been accepted.

Q You said something about timing and I don't think I understood you. I understand that annexation takes place on the first of each year. But you went into vacant land after that. What do you mean when you said the timing indicated this was the purpose of the compromise to dilute?

A I don't think it is any secret that the appeal–it was obvious that the County residents would appeal and the normal appeal process takes four and a half months. You have four months to lodge the appeal. And then normally three or four months before the Court acts. It would then–normally [182] you can petition for a rehearing after that. So that would have gone over into the next year. So the compromise was the only way in which the award could be effected in time for the 1970 elections.

* * *

Q [192] When you had conversations with Mr. Valentine and Mr. Daniels, did they represent to you that they or the group they spoke for controlled City Government?

A Yes. I think they indicated that they–that a new element had assumed control of Richmond Forward and that it was more enlightened and that they wanted to discuss with us the possibility of working something out.

MR. VENABLE: May I continue, Your Honor?

BY MR. VENABLE:

Q All right. In these conversations were they discussed–was annexation discussed?

A Yes.

Q Was the political ramifications of annexation discussed?

A [193] Yes.

Q And what was that political ramification of annexation?

A That once annexation had been achieved that there would be more white voters in the City and that

the objectives that I said I wanted to accomplish could not be accomplished unless I cooperated with them.

Q This cooperation with them, what did that entail?

A Well, not running as independent, running on a Crusade–I mean a Richmond Forward ticket.

* * *

Q [195] Welfare has been mentioned as a very serious problem in the City of Richmond and there has been brought out in testimony that welfare–the City bears less than 20 percent of the total welfare costs. In other words, expenses. is that your knowledge of the fact?

A Well, I think at the last year the City welfare, total welfare budget, was about 26 or 27 million dollars, but only about 21 or so of that was from federal and state sources. I don't think that is a major cause of the City's [196] problems.

Q But it did cost the City about what, four or five million?

A Well, probably cost the local share, I believe, around six million dollars altogether.

But the point I would like to make is that those welfare dollars are dollars that turn over three or four times in the economy and in which you are talking about almost 100 million dollars turning over in the economy each year as a result of a large infusion of state and federal funds coming into the economy. And I don't think that with the small local share involved, five or six million dollars out of a total budget of 130 some million, the resulting impact on the economy, that the welfare is a problem that it is made out to be.

I think it is overused and misrepresented and misstated to the public.

Q Mr. March, you testified earlier that of exclusion from certain meetings dealing with annexation and decision-making process. It is true, is it not, Mr. Marsh, that before a vote of Council is taken you are notified and have the opportunity to be there to cast your vote?

A That is correct.

Q How often are you invited to participate in the decision-making process that went into the introduction [197] of that which you voted on?

A Well, I think it is a known fact that I have not been permitted, at least during the period of time leading up to annexation, to participate in many of the decisions that were made prior to the formal introduction or the formal vote in the City Council. On many of the areas of important concern, especially those dealing with boundary expansion and expressway and other vital areas.

Q Do you consider your vote at City Council to be participation in the decision-making process?

A No, I do not.

B. Transcript from *Holt v. Richmond*, 334 F.Supp. 228 (E.D. Va. 1971), (*Holt I*), of Hearing dated October 19, 1971.

Testimony of Alan F. Kiepper

Q [40] All right, sir.

Now, you were going into another subject.

A Yes, sir.

I wanted to comment on the effect on the school system of de-annexation.

The ratio of white to black students in the Richmond public schools has been decreasing for many years. This current school year has seen a loss of some 4,000 white students. De-annexation will require immediate and major additional changes to the City's programs for school assignment, or it will preclude the maintenance of a reasonably integrated [41] system.

Although exact data is not available at this time because spot maps have not yet been prepared, upon de-annexation it is the best estimate of the Superintendent of Schools that the schools' enrollment or the average daily membership in the Richmond public schools would drop from approximately 45,000 to approximately 39,000, or a loss of some 6,000 students.

Virtually all of whom would be white. This would result in a school system with a ratio of 80 percent black and 20 percent white, and such a ratio would make it impossible to maintain any kind of reasonable semblance of a unitary school system within the remaining City.

* * *

A [113] Yes, sir. It is part of it.

Q I will tell you the reason I asked you that is I questioned the 509. I did not question the demotions.

A I see. Thank you, sir.

Q In terms of the City's operating budget, Mr. Kiepper, it is your responsibility as city manager, I gather, to prepare such a budget?

A Yes, sir, it is.

Q To do so I would imagine, and I don't mean to simplify it, that you have to determine the cost of

services and you have to have some idea of what the revenue is going to be?

A Yes, sir.

Q Now, can you give me or tell me what the revenues were for the annexed area in 1970-'71?

A Yes, sir. I think I can. If you give me a minute to refer to some work papers.

Yes, sir. Our estimate of revenue for the fiscal year 1970-'71 for the annexed area was $13,527,115.

Q I am sorry. Could I have that again?

A $13,527,115.

Q Okay.

How about '71-'72?

A $14,518,666.

* * *

[117] service? Now, if I am wrong, other than real estate taxes, show me where.

A Well, let me—I am going to have to explain how we budget. We budget on a July-June fiscal year. We estimate we have revenues to be received within that 12-month period.

Now, what I am saying to you is that a disproportionate amount of our revenues fall due in the last six months of the year. The largest single source of revenue to the City is the real estate tax.

Q In the last six months of the fiscal year, but not the regular year?

A Well, wait a minute. But you said if annexation, de-annexation took place on January 1, 1972, we would end up having spent at a normal rate for the first six months, but we did not collect revenues at a proportionate rate for the first six months and we

would end up with approximately a $3,000,000 deficit in terms of revenues as compared to expenditures.

Q Well, let me ask you this. On page eight of your Appendix A—

A Yes, sir.

Q —the last sentence of the page says, "It is estimated the adverse net effect on the City's 1971-'72 [125] City.

* * *

A But I can tell you this work is spent or under [126] contract.

Q Do you know what the philosophy of the state payment program is for this road work?

A Do I know what the philosophy is? No, I don't know. I would like to understand it more if you can tell me.

Q Are you aware that the state does this work for the County?

A Yes.

Q Are you aware that the philosophy is that the City is going to do its own work and the state formula is designed to reimburse them in full for it so that the City is treated like the County?

A Well, that may be the philosophy but it doesn't work out that way in fact, Mr. Allen. And I don't think any city in Virginia will tell you that the state payment fully covers its street maintenance work. City streets take a much more severe boating than do rural county roads.

Q On page eight of the operating budget figures you mentioned $539,000 being an amount which health and welfare services are expected to cost. Do you see that figure?

A What page are you on, sir?

Q Page eight.

A Yes, sir.

Q Approximately 80 percent of that is paid for by [127] state and federal funds, is it not?

A No. About 80 percent of the welfare expenditure is paid for by the state, but state and—state and federal government. But only 55 percent of the health expenditure, in fact something less than that because there are some local health services that are 100 percent City financed.

Q So that figure there of perhaps approximately 55 percent of it is funded from state and federal sources?

A Approximately.

Keep in mind the way that we budget. We bring in all revenues and appropriate out all expenditures so that we have funds coming in for other functions as well. And we appropriate gross amounts.

Q Mr. Kiepper, if de-annexation is ordered and becomes effective January 1, 1972, then the City as of that date will cease to provide these services that you have been mentioning to the annexed area, is that correct?

A I would assume that that would be true, yes, sir.

Q Now, in terms of the $13,000,000 that you have appropriated then for the annexed area, physical and people-oriented services, I gather a lot of that, a substantial portion of that amount would then be free to put into other areas, is that correct?

A Well, no, sir. If we are going to lose revenues [128] also we would have to terminate expenditures to the best of our ability.

Now, in the case of equipment purchases, they very probably have already been made. In the case of salaries we could terminate expenditures by immediately terminating the people on January 1. That would be where the majority of the funds would be.

Q If attrition and vacancies and the County absorption doesn't take care of it?

A They are not going to take care of it by January 1, Mr. Allen. No way in the world it could possibly make a dent in it in that period of time.

Q Mr. Kiepper, you referred in your opening sentence on the operating budget as follows: "De-annexation would create havoc with the City's operating budget."

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q But nowhere do you say that the problems that the operating budget would be caused could not be solved. You don't see that statement anywhere in there, do you?

A What was that again, Mr. Allen? I am not sure I understand your point.

Q You state that de-annexation would bring havoc [129] upon the City's operating budget?

A Right.

Q I don't see where you say in there that these problems could not be solved.

A Well, I think the only way they can be solved is to lay off the 500 people that we previously discussed, to demote the 180 people that have been promoted, to cancel as many expenditures for fiscal improvements as possible, and equipment, do everything we can to cut

back expenditures because of the revenue that we will lose. And that, in my judgment, would be havoc.

Q And the possibility—but still this can be done?

A Of course it can be done. It would have to be done under the City charter.

Q And a substantial alleviation could come about in the event there were some vacancies in the City government and in the event the counties came in and agreed to take over some of these contracts which could substantially alleviate the problems with the operating budget, could it not, Mr. Kiepper?

A Well, that is a question of judgment, Mr. Allen. I think it would be unlikely to be substantial, certainly as far as personnel are concerned.

Q [130] And it is your testimony then that you really can't see any alternative but to dismiss these 509 people and to do these other things that you have talked about. No other reasonable alternative, is that your testimony?

A Mr. Allen, the charter requires the city manager to keep the budget in balance. The City of Richmond cannot operate at a deficit and if a deficit position were forecast, which it would be as a result of de-annexation on January 1, we would have no alternative but to take the type of drastic step that you have just enumerated and that I have enumerated.

Q Are you making money off the annexed area now? Does it show a profit?

A No, sir.

Q You are losing money off it?

A Yes, sir.

* * *

II. Transcript of Testimony in *City of Richmond v. United States et al.*, from Hearing Before Special Master Held October 15-17, 1973.

Testimony of Thomas J. Bliley, Jr.

[49] DIRECT EXAMINATION

BY MR. RHYNE:

Q Will you state your name and address, please?

A Thomas Jerome Bliley, Jr. 408 Henri Road, Richmond.

MAGISTRATE MARGOLIS: Would you spell your last name for the record, please?

THE WITNESS: B-l-i-l-e-y.

MAGISTRATE MARGOLIS: Thank you.

BY MR. RHYNE:

Q Would you state the position that you now hold with the City of Richmond?

A Mayor of the City of Richmond.

Q When were you elected as Mayor of Richmond?

A I was elected as councilman and took office on July 1, 1970, and at a caucus of Council on that date I was selected by the Council to serve as Mayor.

Q When were you first elected as a City Councilman of the City of Richmond?

A 1968.

Q And have you served continuously as a Councilman from that time until now—until you were elected as Mayor?

A Yes.

* * *

Q [58] Mr. Mayor, did there come a time after the filing of this lawsuit which was based on asking the

Court to approve election at large when the City of Richmond changed that policy and you and the Council proposed to this Court a ward plan?

A Yes, sir.

Q Will you state the background of that?

A Another case was before the district court involving the City of Petersburg and the Justice Department when the Supreme Court affirmed the decision of the district court for the Three Judge Court for the District of Columbia, the decision which said that Petersburg had to go to a ward system.

Our attorneys requested a meeting with council, the City Council. We met, the City Attorney advised us that in their considered opinion the City should submit a nine ward plan.

Whereupon, we had a plan prepared—several plans. We held a meeting of the City Council. No conclusive vote was taken. It was a tie vote with one member being absent. However, the consensus was that we submit it.

The City Attorney did submit the plan to the Justice Department, and it came back from the Justice Department with [59] a modification to plan.

Whereupon, Council, again had approved the plan, nine ward plan. I believe that looks like it over there on the board.

Q Mr. Mayor, I'm going to hand you what has been marked as Exhibit Number 15. All parties have a copy of this. If they do not, I will be glad to furnish them copies at this time.

MAGISTRATE MARGOLIS: All right.

MR. RHYNE: Are there any parties that do not have any copies of Exhibit 15? If you'll hold up your hand we'll furnish it.

(No response.)

MAGISTRATE MARGOLIS: I think I'd like to mark it for our record, Mr. Rhyne.

MR. RHYNE: Shall we mark them, Your Honor, in the way they've been marked in the record up till now, which will be "Exhibit 15"?

MAGISTRATE MARGOLIS: All right. I presume you're going to introduce 1 through 14 a little bit later too?

MR. RHYNE: Yes. Yes.

MAGISTRATE MARGOLIS: All right.

MR. RHYNE: If the Clerk then would mark the piece [60] of paper I've handed to Mayor Bliley as Exhibit 15, please, for identification?

MAGISTRATE MARGOLIS: All right. We'll mark it as Exhibit Number 15.

(Whereupon, the document was so marked as Plaintiff's Exhibit Number 15, for identification.)

BY MR. RHYNE:

Q Now, Mr. Mayor, is this Exhibit 15 which I've handed to you the nine ward plan that you referred to as the one that was approved by the Council after the Department of Justice suggested some changes in your earlier plan?

A Yes, sir.

* * *

Q [87] Mayor Bliley, I show you what has been marked as Defendant's Exhibit 2 and Defendant's Exhibit 3—[handing exhibits to the witness]—which it has been stipulated are the maps from May of 1971.

[88] Could you very briefly explain what each of these exhibits is?

First, Defendant Intervenor's Exhibit No. 2.

A. No. 2 is a division of the city into six wards.

And No. 3 is a nine-ward plan.

Q Now, Defendant's Exhibits 1, 2, and 3—which you have before you—are the three maps which the City Council had in May of 1971. Is that correct?

A I assume so, yes.

Q And what happened with these maps?

A The Council did not wish to consider—the majority of the Council at the time did not wish to consider a nine-ward plan.

So, they asked the City Attorney to take the others to the Justice Department to see if they would approve one of the three.

I think there was another plan—which is not in here—that had four wards and five at large.

Q This is in May of 1971?

A Right.

This was subsequent to our meeting with Mr. Norman.

Q And they were to be presented to the Department of Justice?

A Yes.

Q [89] And then did there subsequently come a time when a map containing two wards was prepared?

A The two-ward plan, the first time I saw that was when the intervenor in Holt 1 presented a two-ward plan to the District Judge in Holt 1 as a remedy. That was the first time that I had seen it.

Q And approximately when was that?

A That was in, I think, November of 1971.

Q Calling your attention to late October 1971—specifically to October 25, 1971—do you recall a City

Council meeting at which Mr. Valentine made a motion that the City Council instruct its attorney to present to the Federal Court a map of five wards and four at large—being one of the maps that you have in front of you—and as a second possibility that the City Council instruct its attorneys to also present to the Court the nine-ward plan that you have in front of you?

A I remember the motion. The date could have been October the 25th or some other date. But—I mean, I don't remember the specific date.

But there was such a motion. And I assume that Mr. Valentine made it. He could have—or one of the other members of the Council.

Q Do you recall that pursuant to a motion by Mr. Carwile the motion by Mr. Valentine was divided into two [90] parts: first, a vote on the five-ward plan and then on the nine-ward plan?

A Yes.

Q And do you recall the Council subsequently voted separately on a five-ward plan and a nine-ward plan?

A Yes.

Q What happened with regard to the five-ward plan?

A The five-ward plan was approved, as well as I remember.

Q And what happened with regard to the nine-ward plan?

A The nine-ward plan failed the first time, was reconsidered twice at the meeting, and finally passed.

Q And isn't it true that the nine-ward plan when it finally passed was—the instruction was to present the

nine-ward plan to the Court only as a remedy of last resort?

A I believe that is correct. That was the intent.

Q So, the strong preference of the Council at that time was for a five-ward plan—and not a nine-ward plan.

A Yes, sir.

* * *

Q [95] Mayor Bliley, we have now looked at a large number of maps. And you have testified that you had various maps that were discussed in October of 1971 and that a Council resolution was passed directing the City Attorney to present a five-ward map to the Court in Holt 1—and only as a last-resort remeby to present a nine-ward plan.

Is that true?

A Yes.

* * *

Q [96] Now, after the October 1971 meeting, at which time the Council reluctantly directed the City Attorney to present a nine-ward plan—

MR. RHYNE: He didn't say anything about "reluctantly," Your Honor. He is misquoting him.

BY MR. PARKER:

Q —as a matter of last resort directed the City Attorney to present a nine-ward plan and, as a preface, directed the City Attorney to present a five-ward plan—isn't that true?—

A Yes, sir.

Q After that meeting, when was the next time at which you—you as the Mayor or you as a City Councilman—became [97] involved in a discussion of

possible ward plans and dividing the City of Richmond into some four or more single-member districts?

A To the best of my knowledge, Mr. Parker, this was sometime in February of 1973—sometime around the 15th of February, give or take two weeks.

Q Of this year?

A Of this year.

Q In other words, between October '71 and February '73 you had no discussion with regard to possible single-member-district plans involving the City of Richmond?

A That is right, sir.

Q Did you have any discussions with anyone on this subject during that time?

A I talked to some citizens committee about it. They asked me about it.

But we never discussed it at the Council.

Q In your talking with citizens—can you remember any specific conversations—

A No.

Q —you had?

A No, I can't.

Q You say that you may have had some.

[98] Do you think you had some? Or do you think you—

A I think it is possible. But I can't remember any specific conversation, Mr. Parker.

I talk with citizens every day.

Q And, so—

A A number of them.

And we talk about a lot of things. And one of the chief questions, you know, is, "When are you going to have an election?"

Q Do you remember–then, I take it, since you are merely speculating that you had such discussions–which sounds reasonable by virtue of your position–I take it that you can't remember the substance of any such discussions.

A No, I couldn't. No, I couldn't.

Q Now, coming to February of this year, when you first discussed again ward plans, what was the context of that discussion?

A My basis of that discussion was, following the Court's decision in the *Petersburg* case and the affirmation of that decision by the Supreme Court, our attorney requested a meeting with the City Council.

A meeting was arranged. And our attorneys recommended that in light of the *Petersburg* decision that we submit a nine-ward plan to the Justice for approval–and to this Court.

[99] At that time it came to my attention that a nine-ward plan could possibly be drawn in which you didn't have any of the wards to cross the river. And I asked, certainly if it could be done that such a plan be prepared.

Q How did it come to your attention that such a plan could be drawn?

A It came to my attention from the City Attorney.

Q And the City Attorney is "who"?

A Mr. Conrad Mattox.

Q And specifically how did you–could you give me a little more detailed insight as to how this came about?

A It came about because of recent–as he explained it to me, there were recent court decisions which said that you didn't–the "one-man/one-vote" rule was not

as sacred as–at least you could have greater deviation in the number of people in a ward and, because of that, it would be possible to draw a nine-ward plan that didn't cross the river.

Q Did you–this discussion that you had where this came to your attention, who initiated this discussion?

A The City Attorney, Mr. Mattox.

Q And what was the context of it?

You were sitting in your office one day. And Mr. Mattox came in and said, "Say, have you heard about *Petersburg*?"

Or what?

A [100] No. He proceeded with the *Petersburg* decision separately.

He–I don't know whether he passed me in the hall or just where I saw him. It might have been at a Council meeting. I can't remember the exact location.

But he told me that this was possible.

I said, "Well, if it's possible, let's have the planners draw the map."

He said, "Okay. And they are working on it."

Q He said, "Okay. They are working on it"? Or, "Okay. We will have them work on it"?

A Well, I don't remember the exact words. It could have been, "They are working on it," or, "they will work on it."

In any event, they did. And they did produce it.

Q And this, to the best of your recollection, was in February of this year?

A Yes, sir.

Q And what–do you remember, did he tell you what the decision was with regard to "one-man/one-vote" that caused this?

A He may have. I can't remember the exact decision.

Q Well–

A I am not–you know, "decisions." I am not a lawyer.

Q Specifically, did you get into a discussion of percentages of variation among wards at that time?

A. [101] No.

Q So, all he said was–paraphrasing–"There has been a decision which allows us to deviate from a strict 'one-man/one-vote.' So, why don't we have a nine-ward plan that does not cross the river."?

A. No. I don't think that is a correct paraphrasing.

What he said was, because of a decision you could draw a plan which had nine wards of which three of them were south of the river and six of them were north and none of them crossed.

I said, "If such a plan could be drawn, I would like to see it. And I am sure the Council would."

Q You had not had any discussions prior to that time with regard to a plan which did not cross the river. Is that correct?

A No, sir.

I was under the impression it couldn't be done.

THE COURT: "It could not be done"? Is that what you said?

THE WITNESS: It could not be done because of the "one-man/one-vote."

BY MR. PARKER:

Q When had you formed that impression?

A Right from the start. They indicated they had to have the wards almost mathematically exact as far as the numbers of people each contained.

Q [102] Who is "they"?

A The planners.

Q Which planners?

A Mr. Todd and his staff.

Mr. Todd at that time was Director of City Planning.

Q And he told you that you had to have plans that were almost mathematically equal because of the voting?

A That is my knowledge as to what he said.

Q And when did he tell you that?

A In May of 1971, when we first began the discussions of ward plans.

Q And did you discuss with him what sort of deviation would be required from "exact" quality if you did not cross the river?

A No.

Q Were you aware at that time that there were 163,571 people who lived north of the river?

A No, I wasn't.

Q And, so, you were not either aware that that there were 85,870 people who lived south of the river?

A No.

Q And, taking it from that, you would not have known that on a mathematical basis you could have drawn nine wards respecting the river and have a maximum deviation of "4.9 percent"?

A [103] No. I really don't.

* * *

Q So, you were not aware of what sort of deviation would be required to cross the river?

A No.

Q Were you aware of the deviation in ward size within the plans that were drawn?

A Well, they had the numbers of people in them. And I knew that there was a difference in the deviation.

Some of the maps that I had seen had—they showed the deviations on the maps. But I didn't pay a specific amount of attention to it, because I am not a demographer and I didn't—I would know how to start to draw a ward plan.

Q Then, I take it, as a result of your discussion with Mr. Mattox you instructed—or somebody instructed—the planner to draw a nine-ward map in the spring of this year with respect to the river.

Is that correct?

A [104] Someone did. I didn't.

I didn't "instruct" him. I just asked, if one was possible. I certainly would like to see it.

Q You asked Mr. Mattox that?

A Right.

Q Did you ask anybody else?

A No. I did not discuss it with anybody else.

Q So, you did not discuss it with the planner, yourself?

A No, sir.

Q And subsequently was a plan produced with respect to the river?

A Yes.

* * *

Q [112] When—as a matter of fact, when the City Attorney went to the Justice Department he submitted four plans, did he not?

A He may have.

Q Your resolution did not call for any particular plan. It merely called for a plan dividing the city into nine wards. Is that not correct?

A Right.

But he generally knew which one the Council favored.

* * *

Q [113] Mayor Bliley, you testified in response to my last question—or a recent question—that the City Attorney was instructed to present a nine-ward plan to the Department of Justice. Is that correct?

A No.

The City Attorney indicated that he had sufficient [114] instructions on which to proceed. Since he worked for all nine members of the Council and since five of them favored this course of action, he felt that he had sufficient instructions.

Q Did you subsequently—do you know what he subsequently did?

A Yes.

He went to Washington and submitted the plans. He came back with a modification to the plan we submitted, at which time the Council met again and approved the plan for the—that I believe is Exhibit 15—that divides the city into nine wards and has the approval of the Justice Department.

Q Now, you have said that he went to the Justice Department with "plans."

He took four different nine-ward plans to the Department of Justice. Is that not correct?

A I suppose. Yes.

Q And you have testified that he did this contending that he had instructions from sufficient Councilmen to do that?

A That is right.

Q I show you what has been marked for identification as Defendant Crusaders' Exhibit No. 11. [handing exhibit to the witness.]

Can you tell me what that is?

* * *

Q [118] Now, calling your attention once more to the March 27th meeting:

You testified that citizens spoke and that there was stiff opposition to a nine-ward plan.

A Yes, sir.

Q What else did citizens speak about?

A Well, the citizens—some of them spoke in favor of trying for a five/four system—as I remember it.

And I don't remember much else that went on.

Q I believe you testified earlier that one or more citizens testified in opposition to any plan crossing the river.

A [119] I think so.

Q How many citizens testified in that respect?

A I don't remember.

Q Was it more than 10?

A I don't think so.

Q Was it more than five?

A I don't remember.

Q Do you remember the names of any witnesses who testified against a plan crossing the river?

A At that meeting?

Q Yes.

A No.

Q Do you remember the names of any citizens who spoke to you during that week—between March 27th

and April 2nd of this year—and expressed their opposition to a plan crossing the river?

A No, I don't.

* * *

[120] BY MR. PARKER:

Q Mayor Bliley, I show you what has been marked for identification as Defendant's Exhibit 12—for Defendant Crusaders Intervenor No. 12—[handing exhibit to the witness]—and ask you what that map represents.

A [121] [Looking at exhibit.] Well, it is a map of the City of Richmond.

It has two districts and, I assume, part of a third.

It says it is the 1971 State Senatorial Districts 9 and 10—which is the two Senators for Richmond—and No. 11—which we share with Chesterfield.

Q Now, it is true, is it not, that No. 9 encompasses the eastern half of the City of Richmond—going both north and south of the river—and 10, the western half, with the exception that a small portion of the southwestern part south of the river is encompassed in No. 11?

A That is right.

* * *

Q [130] Mayor Bliley, how long have you lived in the City of Richmond?

A I have lived in the City of Richmond—continuously within the city except for time out in the service from 1932 until 1959, all in a house in Henrico County—a quarter of a mile from the city line. And I lived in that house and continued to work in the city until 1966.

Since 1966 I have lived in the city continuously.

Q And how old are you, sir?

A I am 41.

Q [131] So, with the exception of college and the service, you have lived in or within a quarter of a mile of the City of Richmond for 41 years?

A That is correct.

Q Now, I asked—this is slightly repetitive, and I apologize to His Honor—but I would like to back up once again to:

Where is the Maggie Walker High School?

A The Maggie Walker High School is at Lombardy and Leigh Street.

Q And that is in what part of the city?

A That is in the central-west end north of the river.

Q And where is the Armstrong High School?

A The Armstrong High School is on the Nine Mile Road in the east end.

Q Almost on the city line bordering the County of Henrico. Is that right?

A It is pretty close.

A And both of those high schools were black high schools until the schools were desegregated. Is that not correct?

A Yes, sir.

Q Could you tell me the names of the other high schools in the City of Richmond prior to desegregation?

A [132] John Marshall.

Q Where is that high school?

A Now it is located on Old Brook Lane. At that time it was located at 9th and Marshall.

Q And what part of the city is that?

A 9th and Marshall is right downtown, in the business district.

And Thomas Jefferson, which is located on Augusta Avenue in the west end.

I don't know when George Wythe opened. But it was sometime in the 1960s.

Q And that is located south of the river?

A That is located south of the river.

Q And when, if ever, did the City of Richmond begin to provide transportation to school-children.

A It provided it when the Judge ordered it. And that was in—this is for all of the children. I think there were some "special education"—or something like that—provided before that.

But, basically, it did not provide transportation until—I don't know whether it was 1971 or—

Q The fall of last year, was it not?

A It might have been.

It was fairly recently. I know that.

Q [133] The pairing of the schools under the Court Order had been in effect for a year prior to the Court-ordered transportation. Isn't that true?

A I know that we had the Court-ordered bussing in August or—when the schools opened in 1970.

Q The "pairing" or the "bussing"?

You say the "bussing" was last fall?

A Well, the "pairing," I guess, would be the proper—

Q The pairing was prior to the bussing. Is that not correct?

A Prior to the city having to purchase buses, I think so.

THE COURT: Could you get to your point a little bit faster, Mr. Parker?

BY MR. PARKER:

Q I think I asked this–but Armstrong, being almost in Henrico County, is, of course, north of the river?

A Yes. It is north of the river.

MR. PARKER: One moment, Your Honor. [Conferring with co-counsel.]

Thank you, Your Honor.

BY MR. PARKER:

Q This morning, Mayor Bliley, you testified that the river is–I believe you used the phrase–"a natural boundary."

A [134] Yes, sir.

Q What do you mean by that?

A I mean that there is a distinct community of interest south of the river as well as north of the river.

Q What do–

A The two are not the same.

Q When you say "a distinct community of interest," what do you mean?

A I mean that the people's concerns are different on north of the river and south of the river. Those south of the river have one concern as far as the services they feel they need and require from the city as opposed to those north of the river.

Q Do I understand you correctly, then, that all of the people south of the river have one set of interests and all of the people north of the river have an entirely different set of interests?

A Well, some interests, I am sure–on some of the issues their interests would be the same. But they do have distinct interests–and oftentimes conflicting.

Q "Oftentimes."

"Usually "?

"Oftentimes" is–

A [135] When certain issues come up, yes, they are diametrically opposed.

Q And are there not also issues in which people in one part north of the river would be diametrically opposed to people in another part north of the river?

A Possibly, yes.

Q And is that not also true south of the river?

A I haven't come across it. But I suppose it could be.

* * *

BY MR. PARKER:

Q Mayor Bliley, just before the recess you spoke of the fact that there are distinct differences between the people north of the river and the people south of the river. I believe you used the phrase "community of interests."

A [136] They have some different interests, yes.

Q And has the City Council ever discussed the concept of "community of interest"?

A It may have come up in a discussion of various matters before the Council. We are involved with it when we take up certain matters that we know are based on a community of interests in a particular community involved with the particular matter that is before the Council.

Q Well, there you are speculating that you know what the views of the people are.

What I am asking is, specifically with regard to the ward system:

Did the Council ever discuss the concept of "community of interest"?

A No.

Q Did the Council ever discuss the concept of "neighborhood"?

A No.

Q Did the Council ever give any instructions to anyone with regard to drawing a plan with regard to "community of interest"?

A I can't speak for the other members of the Council. But the Council, itself, as a whole never did. And as a member of the Council I never gave any instructions on that to anybody.

Q [137] What do you, in your own mind, define the phrase "community of interest" to mean?

A Well, "community of interest" as I have used it—there are certain neighborhoods—historical neighborhoods, sections of the city—that have formed citizens associations and expressed to me that they have a community of interests. And those people act together in that regard.

Q You are saying that the people within one neighborhood have a "community of interest." Is that it?

A Yes. Generally speaking, they have a common interest.

Q And how would you define a "neighborhood"?

A A "neighborhood" is a group of residents—be they single-family or multi-family areas of the city—where people live in a geographic location within a political subdivision, such as the city.

Q You mentioned civic associations.

How do they relate to "neighborhood" and "community of interests"?

A Usually the civic association represents a neighborhood. Or it may be several neighborhoods together—usually contiguous to one another.

And the civic association meets, and they discuss certain things. And they take a position, which position is usually referred to—which involves something with regard to [138] the city—or something that is up for consideration by the City Council—which view is expressed usually by the officers of the civic association to the members of the Council, collectively or individually or both.

Q Now, then, I understand from your answer that one neighborhood would be represented by one civic association—or one neighborhood would have one civic association and another neighborhood would have another civic association.

Is that true?

A Usually, yes.

Q Could there be one neighborhood that will be represented by two civic associations?

A I suppose it could be. I can't recall any offhand from memory. But I suppose it can happen.

Q But as far as you can recollect at this time, each civic association would represent one or more different neighborhoods?

A That is right.

It is usually in such neighborhoods that are contiguous to one another.

Q But you can't think of any examples where the civic associations overlap each other?

A I don't know of—I can't recall any offhand.

But that does not say that none exist.

Q [139] And, so, each association would represent a distinct community of interest?

A Possibly.

Q And there are what—some 50 or 60 civic associations—within the City of Richmond?

A Could be.

I don't have any exact count.

Q Could you give me the approximate count? Does "50" or "60" sound right?

A I don't know. I never totaled them up.

Q Does that number sound extremely high?

A As I said—

THE COURT: He said he doesn't know. He can't do any better than that.

THE WITNESS: I don't know.

MR. PARKER: Okay.

BY MR. PARKER:

Q Now, I take it from your earlier testimony that you don't think a Councilman should represent people who have different communities of interests.

Is that true?

A I said that I didn't think a Councilman should represent people on both sides of the river. That is true.

Q [140] But, other than that, you have no problem with a Councilman representing people with different communities of interests?

A I have no problem with a plan for the city that doesn't involve wards crossing the river. To me that seems a major factor.

I realize that you have to have lines—you have to have numbers of people—and sometimes you are going to split a neighborhood no matter how hard you might try not to do that.

But I think the river is a major factor. Of all the neighborhood boundaries, that is certainly the largest factor.

Q Are you familiar with a neighborhood known as Oregon Hill?

A Yes, sir.

Q Is Oregon Hill a neighborhood?

A It was. But it has been pretty hard hit by the town expressway and also by the expansion of businesses in the Commonwealth of Virginia University.

So, it is still there. But its size has been diminished considerably from what it once was.

Q What is the character of Oregon Hill—what is left of it?

A Residential.

Q [141] What sort of "residential"? I don't know what you mean by just "residential."

A Single-family, for the most part.

Q Do neighborhoods—you mentioned the differences between neighborhoods.

Would neighborhoods differ as far as economic status is concerned?

A As far as the average income being, yes.

Q You wouldn't be likely to find a lot of people with, say, a $5,000.00 annual-mean income in the same neighborhood as people with a $50,000.00 annual-mean income?

A Generally speaking, you don't.

Q And, similarly, with a couple of exceptions, you don't tend to find people who might be referred to as "ethnics" in the same neighborhood as people who—for lack of a better term—would be "First Family of Virginia Wasps"?

A I don't know.

It could be that there are instances where they do live in the same neighborhood.

Q Then, the term "ethnic" would not play a part in defining the character of a neighborhood?

A It doesn't in Richmond–not "ethnics."

Q How about "race"?

A [142] There are certain neighborhoods that, because of housing patterns generally speaking, are residents of one race or another.

Q So, then, you would say that neighborhoods differ geographically–that is, as far as "boundaries" or "barriers" such as the river or the turnpike are concerned. Would that be a fair statement?

A That would be a natural boundary, I would think.

Q Like a par, would that be a "natural boundary"?

A Could be.

Q So, they differ because of natural boundaries and they differ because of economics. Is that true?

A They differ because of location; the neighborhoods do. The people who live within the different neighborhoods differ because of one neighborhood as opposed to another because of economics.

But–

Q And a poor neighborhood would have a different community of interests from a rich neighborhood. Is that not correct?

A Generally speaking, I would say, yes.

Q And neighborhoods vary and have different communities of interests because of race. Is that true?

A I don't know that that necessarily would be true.

[143] Economics might play a greater factor than race.

Q Okay.

And, now, what is the economic status of the people who live in Oregon Hill?

A I would say that they would probably be below-average income.

Q Significantly below?

A I don't know, Mr. Parker.

I have never seen any figures on what the incomes of the residents are that live in Oregon Hill. So I couldn't–

I would say, judging from my knowledge of the neighborhoods in the city, that the annual income of the persons living there would probably be below the average income of the citizens of the city.

Q Would you say it is significantly below–

A But, beyond that, I can't expand on this.

Q You never spoke to the Oregon Hill civic association?

A Yes. I have spoken to them–on more than one occasion, not only once–since I have been the Mayor.

Q Before you became the Mayor did you speak to them?

A No.

Q From speaking to them, did you get some feeling of what their interests would be?

A [144] Yes. I got what they were interested in at that time.

Q Are you familiar with a neighborhood known as Westover Hills?

A Yes, sir.

I formerly lived in it.

Q Could you describe Westover Hills for us?

A Single-family residential area, which is located on the south side of the river.

It is generally bounded on the east by Cedar Lane, on the west by the A.C.L. Railroad, on the north by the river, and on the south by Forest Hill Avenue.

Q And what is the economic status of the people who live in Westover Hills?

A I would say that it is above-average.

Q Significantly above-average?

A I don't know.

I have never seen figures on what the income is.

Q What is the racial concentration in Westover Hills?

A White.

Q How about Oregon Hill?

A Oregon Hill is mostly white.

Q Are you familiar with a neighborhood known as Westhampton?

A 145] Yes, sir.

I live there now.

Q Can you explain the characteristics of Westhampton for us?

A Westhampson has pretty much the same characteristics as far as income would apply to Westover Hills.

Q "Above-average"?

A Above-average.

Q You don't know whether it would be significantly above or fairly close to "average"—or whatever it is?

A I don't have the exact figures. But there are sections within Westhampton that would be probably significantly above-average. There are other sections of Westhampton that would be below-average.

Q So, it is not all above-average in that neighborhood?

A True. But I would say it is pretty much above-average.

It is a much larger area than Westover Hills.

Q And are you familiar with a neighborhood known as Windsor Farms?

A Yes, sir.

Q Could you explain the characteristics of the people who live in Windsor Farms?

A Upper income.

Q [146] Significantly above-average?

A Generally speaking, I would say, yes, they are "above-average" if they live in Windsor Farms.

Q And is that an almost exclusively white neighborhood?

A Yes. I believe they are white, all of them—as far as I know.

Q And would the people who live in Windsor Farms have any community of interest with the people who live in Oregon Hill?

A I would say that they would have a different community of interest.

Q How about the people who live in Westover Hills and the people who live in Church Hill?

A I would think that they would have a definite difference in their community of interests, because the people in Westover Hills live on one side of the river and the people in Church Hill live on the other side.

In addition, there is the economic-interest factor.

Q What I have forgotten to ask you is:

What is Church Hill?

A Church Hill is a section of the City of Richmond on the east end.

Q What are the characteristics of the people there?

A [147] I would say that they are below-average in income.

Q How about racially?

A Racially they are predominantly black.

Q Getting back to Westhampton, what about the race of the people in Westhampton?

A Predominantly white.

Q You testified that the people in Westhampton would be above-average—but not greatly above-average—income, whereas the people in Windsor Farms would be significantly above-average—or considerably above—

A Right.

Q Would there be a community of interests among the people in Westhampton and Windsor Farms?

A Yes.

They border each other. Both are located in the west end. Both are served by the same primary traffic-ways. They would have more of the same bus-lines—and what have you.

They would have more of a community of interests, yes.

Q Are you familiar with the neighborhood known as Maymond?

THE COURT: I didn't hear the name.

MR. RHYNE: "Maymont."

THE WITNESS: Yes, roughly.

[148] BY MR. PARKER:

Q Describe that neighborhood for us, please.

A It would be bounded by Byrd Park to the west,

by the James River to the south, by Idlewood Avenue to the north, and by Randolph Street to the east. That would be about the boundary lines.

Q And would you characterize the persons who live there for us?

A I would say that they would be close to average in income—maybe a little above.

Q How about race?

A The race is predominantly black.

Q And would they have any community of interests with the people in Windsor Farms?

A They would have some, but not too much—because you have the park as a natural boundary and beyond the park you have an expressway and railroad to cut them off. So, there is not much interplay in between.

Q Are you familiar with a neighborhood known as Carillon?

A Yes, sir.

Q Could you describe the characteristics of the people who live in Carillon?

THE COURT: I didn't hear the name.

MR. RHYNE: "Carillon."

[149] BY MR. PARKER:

Q What would be the average income in this area?

A It would be above-average income.

Q And would the people in Carillon have a community of interests with the people in Maymont?

A Yes, they would have.

They would have a similar community of interests because both are vitally concerned as to what happens to that park.

There have been discussions about converting the park into a science museum and, also, about expanding the park to the James River—where they are going to put the park, the places, and things of that nature. Both neighborhoods are very much concerned about that.

Q What about Carillon and Windsor Farms? Do they have a common community of interests?

A Carillon and Windsor Farms would not have very much of one because of the railroad as a natural boundary. Some, I am sure they have—but not as much as Carillon and Maymont.

Q How about Carillon and Oregon Hill.

A Carillon and Oregon Hill, I would say they would have little of a community of interests between the two.

Q Would Carillon have more of a community of interests, say, with Westhampton or Windsor Farms?

A [150] I would say they would probably have more of a community of interests with Oregon Hill, since they are in the same—they go back and forth through Oregon Hill to and from the downtown section.

In order to get to Carillon the most direct route from downtown is through Oregon Hill. At least you have to go through there pretty close to it—if not actually through it. You could go around Oregon Hill to get to Carillon, but the shortest way would be to go through it or just past it.

Also, the people in Carillon are vitally interested in what happens along the river—from the Lee Bridge all the way west on the north side of the river. And Oregon Hill is, of course, a part of this.

There is not a great deal of a community of interests, admittedly—but possibly so.

Q Well, isn't Carillon adjacent to Windsor Farms?

A Carillon is adjacent to Windsor Farms. But it is separated from them by a railroad, which is a considerably fixed boundary.

Also, there is a metropolitan expressway in between, which is six lanes wide.

Also, the people in Windsor Farms shop to the west. And they send their children to private schools in the west end. And their recreation, for the most part, is also located to the west.

Q [151] That freeway goes all the way up through the city—or will when it is completed?

A It is not a "freeway."

Q Excuse me.

A toll-way goes all the way up the city?

A That toll-way will go from pretty—well, through the city from about 17th Street on the east to the belt-line. And then it branches and goes south across the river and north to connect with 95 and 64, the interstates.

Q And, so, it forms a "T," sort of, at the western part of Richmond?

A Yes, sir.

Q You testified that it forms a rather major barrier between Carillon and Windsor Farms.

You also testified that Carillon and Oregon Hill would have a greater community of interests than would Carillon and Windsor Farms.

Is that not right?

A I would think this is probably so. But a good case could be made for the other way around.

I think they have more of a community of interests with Oregon Hill—not necessarily a great deal, though. But they probably have.

Q [152] As a matter of fact, aren't Oregon Hill and Carillon separated by Byrd Park, the 24th Precinct, and the Randolph area?

A And two cemeteries.

Q So—

A Three cemeteries.

Q So, there is a significant separation between them. Isn't that true?

A There is a separation.

But in order to get to Carillon I would go, generally speaking, through Oregon Hill by traversing west on Idlewood Avenue, which is just past Oregon Hill. And this, of course, tends to create an additional community of interests.

Q You would say that if you go through one community to get to another, the one you go through and the one you get to would have a community of interests—even though the two are widely separated?

A As far as the road is concerned—which may or may not be a big factor. But they do have a community of interests involving it.

Q They would have a community of interests as far as that road is concerned?

A And they could have, among other things, a community of interests because of that.

Q [153] Do Carillon and Oregon Hill have a community of interest with any of the neighborhoods in the city—say, Windsor Forest?

A Windsor Forest, which is a future development along the banks of the James River on the south side, is

of vital concern to the Carillon area. And what happens in that area would also be of interest to Oregon Hill, which also bounds on the river. That would be of concern to both those communities, yes, sir.

Q Doesn't Windsor Farms also bound on the river for a considerably longer distance and isn't it closer to Carillon than Oregon Hill?

A Windsor Farms does bound on the river. But it is separated—that portion of the city on the river is separated from Carillon by Rothesay.

Q "Rotsi"?

A By Rothesay, which is a cul-de-sac—a separate neighborhood.

Q It is separated by that area from—

A And by what used to be a quarry.

And also by the A.C.L. Railroad.

And, of course, Carillon is already very highly developed by single-family dwellings. And it is one of the [154] strongest civic associations in the city and is well financed. And it would strongly oppose any multi-unit development.

But other civic associations east of Carillon are not as well financed and, perhaps, may not be as able to resist multiple-family development along the river.

Therefore, the people in—

Q Would the people on the south side of the river near the area being developed and the people on the north side just across the area being developed have any community of interests as to who would be next to the development?

A I would say there would be little or none—because you are talking about a distance of a half-mile

to as much in some cases of a mile. And that is a pretty long ways.

Q What about the people at opposite ends of a bridge?

You have stated earlier that the people in different areas have a community of interest in a common road.

What about the people at opposite ends of a bridge across the James River? Would they have a community of interest in that bridge?

A Yes. They have a common interest in the bridge.

But a lot of times it is conflicting interests.

Q Returning to the river factor:

Aside from the bridge, would the people on the south side of the river have a community of interest with the people [155] on the north side of the river as far as pollution of the James River is concerned?

A Yes.

Q What was your answer?

A Yes, they would.

Q And they would have more of a community of interest with regard to pollution of the James River than the people on either side would have with people, say, at the far-northerly end of the City of Richmond?

A No.

I think all the people in the City of Richmond are concerned about pollution in the river, because there is a public park that traverses most of that river and they all want to use it. It is open to all citizens. And I think that all of the citizens are concerned about pollution in the river.

I get many letters with regard to pollution. They come from all sections of the city.

* * *

[158] BY MR. PARKER:

Q And you mentioned that a turnpike—a toll-way—would present a major barrier to the people in different neighborhoods and would separate their communities of interests. Is that true?

A Yes, sir.

Q And that would be equally true with respect to all the neighborhoods in Richmond?

A Yes, sir.

Q And would that also be true of the segment of I-64 which is within the City of Richmond?

A Yes, sir.

Q And that would also be true with regard to various parks, would it not?

A Yes, sir. Depending on the size.

Q [159] And it would also be true with regard to railroad tracks?

A Yes, sir.

* * *

Q [172] Mayor Bliley, you have been on the City Council for how many years now?

A Five-plus.

Q And your constituency is on both the north and south side of the river, isn't it, sir?

A [173] I am elected from the city-at-large.

Q As a matter of fact, the contituency of every member on the Council since 1971 has been both north and south of the river, has it not?

A That is right.

Q And they have represented these people without any conflicts of interest, haven't they?

A I believe that is true.

Q You don't believe you have been involved in a conflict of interest, do you?

A No, I don't.

There may have been some times when I wished I wasn't the Mayor. But I have always strived to make the best decisions for all of the people.

Q But you have been able as the mayor to serve both sides of the river. Isn't that a fact?

A Yes.

Q Thank you, sir.

Now, calling your attention to what you call the "natural boundaries" of the City of Richmond when you were on cross-examination by Mr. Parker, you spent a lot of time dealing with the R.M.A., which is a toll-road, and the expressway, the turnpike 95–which you termed as "formidable barriers"–that is correct, is it not, sir?–

A [174] Yes.

MR. VENABLE: Now, Your Honor, I will speak a little louder. But I wanted to approach this map–[standing at easel and pointing to exhibit]–the ward plan which is Exhibit No. 15.

BY MR. VENABLE:

Q [Pointing to exhibit.] This is a modified ward plan, is it not–modified from what came back from the Justice Department?

A Yes.

Q Now, is it not true that the turnpike 95 splits right down the middle of Ward F and right down the middle of Ward B?

A It splits it.

I don't know–you know, it might be a little bit off the exact middle.

Q Do you want to take one of those maps you have there, sir, and tell us if that is so?

A These are school maps. But I guess I could pick it up on this. [Looking through documents.] I don't have the ward plans here. And it is rather hard to tell from these.

But I would say that it splits it. Yes, it does.

Q It splits it right down the middle, doesn't it?

And the Richmond Metropolitan Authority toll-road [175] splits Ward D in this plan–[pointing]–right smack down through the middle, does it not, coming north up Poor White Creek?

A Yes, sir.

Q When it crosses over the north side of the river it is more or less the boundary between Wards A and E, is it not sir?

A Yes, sir.

Q And then a portion of it–a spur of it–turns to the right–to the east, that is–and comes downtown, doesn't it?

A Yes, sir.

Q Down to what is known as the "Idlewood Corridor," thereby splitting the top part of Ward E right off the ward?

A Yes, sir.

Q And it does the same thing coming into Ward F?

A Yes–except in Ward F, most of it goes through the business area and in Ward H–there are not many people that live north of 95 in Ward H, if any–or between 95 and the river.

Q We haven't talked about H yet.

But talking now about Ward H, at the point where

95 crosses the river in Ward H there is a floodplain in the river there, isn't there?

A [176] There is a floodplain there, yes.

Q And that is where the Sanitation Department and everybody else deposits various kinds of refuse?

A [Indicating affirmative response.]

Q I am now talking about Ward F. [Pointing.]

That ward is bifurcated into three areas—east, west, and north—isn't it?

A Right.

However, most of the people live south of the expressway.

Q Which expressway? 64?

A 95.

Q "95"?

A 95.

Q And 95 runs north-and-south, doesn't it, sir?

A It winkles around in there; it doesn't run true north-and-south.

Q And can you define "Barton Heights" for me?

What is the northern-most boundary of Barton Heights?

A I am not certain whether Barton Heights stops at Buckley Boulevard or not.

Q Don't Ward C and Ward F split Barton Heights?

A No.

[177] Ward C and Ward F—[looking at document]—

Yes, it does.

Q And Ward F and Ward G split Church Hill?

A With most of it lying in F.

Q And Ward H and Ward D, as they approach their northern boundaries, split right smack down the middle of Westover Hills. Is that correct?

A No.

Most of Westover Hills would be to the north and east—to the "west," I mean—of Ward D.

That is Forest Hill that is in H over there—for the most part.

There is some of Westover Hills in H. But it is a relatively small portion.

* * *

Q [183] Now, your personal feeling is that you don't like ward plans at all. Isn't that true, Mayor?

A My personal feeling is that I don't.

At one time I thought that perhaps—maybe—it wouldn't be so bad. But the more I have studied it—and I have had an ample opportunity to do so—the more I feel that at-large elections are better.

Q So, your answer is that you do not like ward plans?

A [184] No.

Q "No"? You do like ward plans?

A No. I don't like ward plans.

Q As a matter of fact, you have gone on record, Mr. Mayor, haven't you, of saying that if and when the City of Richmond and the State of Virginia are able to get out from under the Voting Rights Act you would be in favor of having a referendum in the City of Richmond on whether or not to keep the ward-plan system that was ordered by the Court?

A That is right.

I think the people should be given a chance to decide.

But I also want to say that I am not certain which way they would decide.

Q And, of course, according to the census there were 47,000 white people in the annexed portion of the city in 1970. Is that not correct?

A Right.

Q Your referendums are held at-large in the City of Richmond, aren't they?

A Yes, sir.

Q The newspaper accounts by Mr. James Davis, who is a reporter for the RICHMOND TIMES-DISPATCH, concerning the [185] attitude we have just spoken of—on your feelings as to the referendum and the ward plan—are accurate, are they not, sir?

A Yes, sir.

MR. VENABLE: Your Honor, as a part of the record in this case there is an affidavit filed in June, in which two clippings—the clippings I have just referred to—are attached.

And I move to introduce them as Defendant Intervenor Holt, et al., Exhibit No. 1.

* * *

[188] BY MR. VENABLE:

Q Was the black vote of the City of Richmond diluted by the addition of 47,000 people from Chesterfield County, predominantly all of whom are white—except for 555 or, by your figures, "15-hundred"?

You have admitted that before, haven't you, Mr. Mayor?

A I don't remember.

I know that we added a territory to the city that had people in it and, therefore—most of them were white—so that there are now more whites living in the

City of Richmond than there were before the annexation.

Q Are you prepared to say that there is no dilution caused by the annexation of 1970, Mr. Mayor?

A No.

Q Was the dilution caused by the annexation?

A I would say that the effect of the annexation did produce dilution.

Q Thank you, sir.

* * *

Q [203] Mr. Mayor, in 1971 when the original lawsuit—Holt 1—was filed and the Justice Department objected— [204] since then have you or any other member of the government of the City of Richmond thrown on any brakes whatsoever on what you spend and what bonds you issue on what capital improvements you have placed in the annexed area in anticipation that at any time you may not have proper title to that area and it might be taken away from you?

A No, Mr. Venable—because we are, also, under a five-year order as far as the annexation is concerned to make certain improvements in that area within the time specified.

* * *

B. Testimony of Dallas H. Oslin, Jr.

[212] BY MR. RHYNE:

Q Will you state your name and your home address, please?

A Yes, sir.

My full name is Dallas H. Oslin, Jr.

I reside at 4801 Atwood Road, Sandston, Virginia.

THE COURT: That is "Dallas"?

THE WITNESS: That is right.

THE COURT: How do you spell the last name?

THE WITNESS: "Oslin." O-S-L-I-N.

THE COURT: Thank you.

BY MR. RHYNE:

Q Mr. Oslin, how long have you been employed by the City of Richmond?

A 18 years, sir.

Q And during those 18 years, what has been the nature of your employment?

A The nature of my employment, basically, for the past 12 years is that I have been involved in this annexation suit—with criteria mainly in economics, demography, and cartography.

Q Do you look upon yourself as—in what professional area?

A I am a Senior Planner in the Planning Office.

* * *

Q [215] Now, you referred to Exhibit No. 15 as the "revised plan."

[216] Why did you use those terms?

A I prepared and submitted to the City Attorney, Mr. Mattox—who submitted to the Council—Plan D, which was taken to the Justice Department and submitted to them.

The Justice Department recommended certain changes.

The "Revised Map D," although the ward plan of April 25th, reflects those revisions as suggested.

Q So, Exhibit No. 15 is really Exhibit 14 as revised to incorporate the Department of Justice's suggestions?

A Yes, sir.

Q Now, Mr. Oslin, you stated in general some of the criteria that you used in drawing these ward plans.

Q [213] Now, you referred to this litigation involving the City of Richmond –

A Yes, sir.

Q – in your previous answer.

In that connection – let me withdraw that, and I will start again.

In connection with litigation involving the City of Richmond, have you been asked to draw ward plans for the election of the City Council?

A That I have, sir.

Q I am going to hand you, Mr. Oslin, Exhibits 12 through 15. [Handing exhibits to the witness.]

A Yes, sir.

Q And I am going to ask you to identify – in a few words – each one of those exhibits, starting with Exhibit No. 12.

A Exhibit No. 12 is a ward plan which I prepared – commonly known as Plan C – prepared in October of 1971.

Exhibit No. 13 – commonly known as Plan B – is a nine-ward study, which was prepared also during the month of October of 1971.

Plaintiff's Exhibit No. 14 is also a nine-ward plan – commonly referred to as Plan D, which was prepared in March of 1973.

[214] Plaintiff's Exhibit No. 15 – commonly known as a ward map dated April the 25th, 1973 – was prepared and adopted by the City Council, I think, in the next month.

Q And all of these maps were prepared by you?

A Yes, sir.

Q Now I hand you what has been marked as Plaintiff's Exhibit No. 18. [Handing exhibit to the witness.]

And I will ask you to identify it.

A Plaintiff's Exhibit No. 18 is a revised "demographic characteristics" of the ward map of the City of Richmond dated April 25th, 1973.

This is a document which I prepared.

Q And it as to which of the ward plans that you have previously identified?

A It is a document which I prepared.

Q And it applies to which of the ward plans you have previously identified?

A It applies to the plan commonly referred to as a "Ward Map - City of Richmond / April 25th, 1973" – which is more commonly referred to as the "Revised 'D' Plan."

Q Exhibit 15?

A Yes, sir.

Q Now, in preparing these ward plans, did you use certain census information?

A [215] That I did.

Q I am going to hand you Plaintiff's Exhibits 1, 2, and 3. [Handing exhibits to the witness.]

And I will ask you to identify those.

A Yes, sir.

Plaintiff's Exhibit No. 1 is census-tract information for Richmond, Virginia, and the county compromising the Standard Metropolitan Statistical Area.

Plaintiff's Exhibit No. 2 are black statistics of the Richmond, Virginia, urbanized area.

Plaintiff's Exhibit No. 3 are the 1970 census tracts for the City of Richmond with the population there only shown.

Q Now, Mr. Oslin, in drawing these ward plans, could you state the criteria that you used?

A Yes, sir.

The criteria – the first criterion that was utmost in my mind was the criterion of "equal components" – and nine wards – one-ninth of the city divided geographically – commonly referred to as "one-man/one-vote," that situation.

Criterion No. 2 and thereafter were "compactness," "community of interests," "contiguity," and "likeness of area and responsibility," and "interest in the community."

* * *

Did you take into consideration "race" in any way?

A No, sir.

In drafting up the ward plans I was interested in distribution of the total people—and not in their composition. So "race" never entered into the selection of the areas of the wards.

Thereafter, after the wards were drawn, an analysis was made for the Council as to what the composition of the wards were. But that was a second phase of it—not the phase of the actual drafting of the wards.

* * *

[217] Are all of your facts with respect to "race" based upon these census exhibits that you have identified?

A Yes, sir, it is.

Q Now, do these census exhibits show the racial breakdown for the voters in the new city, including the annexed area?

A No, sir.

In no place that I know of in the census are voters broken down by race or anything.

The census does have age coord's in it. But it does not having anything as to the voter's race.

Q For example, then, do they show the voting population by race before and after the annexation in Richmond?

A No, sir.

They show the voting age—but not the voters, themselves.

In other words, you could either take "21" or "18"; and as a voting age you could tell how many

people there were by "race." But you could not tell whether they were voting or not.

Q Have you–well, taking the people of voting age in the population of Richmond before and after, have you ever computed these by "race"?

A Yes, sir, I have.

Q Could you state what your computations show?

A [218] Yes, sir.

The composition of the City of Richmond in 1970–18 years and above–and the city as it is presently constituted consists of 37.3 percent black above 18 and–

MR. VENABLE: Your Honor, I would like to interpose an objection.

I want to know how this testimony relates to the method and criteria of drawing the ward plans proposed by the City of Richmond and taken to the Department of Justice–which was outside the scope of the testimony outlined by counsel as to Mr. Oslin.

Had I known he was going into this approach about "over the age of 18" and et cetera and that that was the purpose for which these exhibits were being presented, I would have gone into further discovery and had a witness to counter the obvious implication he is trying to put forth by this witness.

And I respectfully submit that he knew full well prior to coming in here today–and I am quoting him–"... will testify regarding the method and criteria for drawing the ward plans prepared by the city of Richmond for the United States Department of Justice"–and he should so be limited, because I will have no witness with which to counter the bald implications of what they are trying to put on now.

* * *

[219] THE COURT: I will overrule the objection.

MR. RHYNE: Go ahead, Mr. Oslin.

THE WITNESS: Would you like me to start back over most of my answer?

MR. RHYNE: Yes.

THE WITNESS: All right.

The total city, which is the area that is outlined in black over there on the map, in 1970 when the census was taken was:

37.3-percent black, 18 years of age and above.

It was 62.7-percent non-black.

And "non-black" includes both white and/or yellow and Indian.

MR. DERFNER: I am sorry to interrupt you. But I think I missed part of the question.

Is this as to the whole city?

MR. RHYNE: The total city.

THE WITNESS: The total city, which is the area outlined in black.

MR. DERFNER: Including the annexed area?

THE WITNESS: Yes, with the annexed area.

[220] MR. RHYNE: I will ask him about the other.

Go ahead.

THE WITNESS: All right.

Within the 1942 city limits–which is commonly referred to as the "old city"–it was:

44.8-percent black and 55.2-percent non-black.

BY MR. RHYNE:

Q Now, Mr. Oslin, with respect to the drawing–

THE COURT: Just a moment.

What time-frame is that related to?

THE WITNESS: That time-frame, sir, is "1970."

THE COURT: And this is before the annexation?

THE WITNESS: The last figure I gave you, Your Honor–"44.8" and "55.2"–was the 1970 figure, but of the city previous–the area of the city previous to the annexation.

THE COURT: All right. Thank you.

MR. VENABLE: Your Honor, I am going to have a continuing objection to testimony that has no relevancy to the criteria used by this individual to draw a plan.

THE COURT: Over ruled.

MR. VENABLE: All right, sir.

BY MR. RHYNE:

Q Mr. Oslin, I would like for you to describe to the Court the method that you used in dividing the City of Richmond into nine wards.

* * *

Q [234] Mr. Oslin, when were you first requested to draw any plans dividing up the City of Richmond into wards?

* * *

[235] THE WITNESS: Sir, I can not tell you the exact date. I can tell you it was in the month of March. Not "March." It was within the month of May of 1971.

I do not keep a calendar to go back to with reference to particular assignments.

I was called into the Manager's office and–

BY MR. DERFNER:

Q That would be Mr. Kiepper?

A Mr. Alan Kiepper at that time.

–and requested to make a study.

And this is the reason why the plans were called

"ward studies." It was not a conclusive thing at that time.

Why he was playing with the idea–toying with it–as an administrator at that time, I do not know.

But I was requested to do a division into nine wards, a division into six wards with three elected at-large, and a division into five wards with four elected at-large.

They were completed and, you know, returned to him. And that was the end of my immediate assignment at that particular time.

Q Did he give you any other–did he give you any specific instructions about how to draw these plans?

A [236] Unfortunately, he did not. I had to do some of my own research in order to come up with where I had to go.

He was an administrator. And I think, me being a demographer, he kind of felt that I could dig up my own stuff.

Q And your research, I take it, was what led you to use the factors–the criteria you have listed here–that is, "equal population," first, followed by "compactness," "community of interests," "continguity," and "likeness of area" and "interest in the community."

A Yes, sir, it was.

Q Did you get any instructions from anyone else at about that time?

A The only instructions I can say I had at the time, I did–I advised my supervisor that I would be doing it. But he did not give me any instructions as far as how to do it, other than just to proceed with the task.

Q And your supervisor was Mr. Talcott?

A Yes, sir, it was.

I think that you have to realize that you have to keep your supervisor advised when you are doing a project for someone that is going on.

Q How long did it take you to draw these plans, roughly?

A I would say, in the neighborhood of the three plans, probably within three-to-five days—at the most, the maximum.

Q [237] Did you have any help in doing that?

A No, sir, I did not.

I am a—somewhat of a loner.

Q In other words, there was nobody in your office who could either draw any of those lines or check any of your arithmetic—or anything of that sort—

A No, sir, there isn't.

Q —at that particular time?

A Not at that particular time.

I did have a draftsman who worked for me on the finished drawings when these plans were prepared for distribution.

As you realize, in the filing of the exhibits the first time all the plans were known as "ward studies." And at a later date they became known as "Plans A, B, C, and D."

At that particular time he did assist in putting those plans into such a fashion that they were presentable.

Q About when was that?

A That was previous to "2-D."

At that particular time I—

Q Would it be sometime in 1973?

A Yes, sir, it was.

These things have laid dormant between '71 and '73—for a very good while.

Q [238] In other words, the plans that we have here, which you have described as being the plans you devised in the spring of '71, are in a sense copies. We don't have here the actual maps that you put your pen to paper on, do we?

A No, sir, we do not.

These are—the correct title of these are "diazo reproductions." They are reproduced from a tracing on a machine.

Q And would you tell me just about how much of a finished product did you give Mr. Keipper in that three-to-five days, or so? In other words—

A In that three-to-five days it was basically just a magic-marker line on a map.

But the arithmetic part of it was finished. But the rapid presentation was just arithmetic—just a magic-marker type.

Q When you say the "arithmetic part was finished," you mean the totals shown on these maps?

A Right.

Q The totals you already had at that time?

A Right.

They were the totals that I had arithmetically added up and divided and had just used—you know—the common, old magic-marker and marked up the map and carried it back to him.

[239] At a subsequent—

Q Had you—

I am sorry.

A At a subsequent date we did go in and make sepias of them, so we could make reproductions for distribution to the members of the City Council.

Q Now, were the lines on the map that you gave Mr. Kiepper at that time exactly like the lines today? Or did you find that you missed a street at one point or needed a correction anywhere?

A Without going way back, I would have to say that no changes have been made, to the best of my knowledge.

I made the maps, myself. And I think that in a majority of instances a handwriting expert will find that the lettering on them is mine.

Q And have you modified any of the arithmetic figures since that time on the basis of revised census figures?

A Let's go back to a concept here.

The first plans that were done were done back in 1971, at which–at that particular time the best census information that was available was the blocked group of a numeration of district information.

At subsequent levels we used refinements as they came out of Washington here.

[240] Exhibit 18, I believe–Plaintiff's Exhibit 18–the ward map, is called "revised demographic characteristics of the"–

Q Did you–

A –"of the wards."

* * *

Yes, sir. It is revised, because I did find out that I made an error. And I tried to find it.

BY MR. DERFNER:

Q You mean, Exhibit 18 is a revision?

A Right.

Q But what about the actual numbers on these exhibits–12, 13–are they the '71 numbers? Or are they '73 revised census numbers?

A To the best of my knowledge, they are '71 numbers.

Q All right.

Now, you drew three plans and gave three plans to Mr. Kiepper in the spring of '71.

A That is right.

Q And then, I gather, later in '71 you drew some more plans.

Is that correct?

A [241] [Pausing.]

Q About October, let's say.

A Yes, sir. About October of '71.

Q At that time you drew another five-ward plan?

A Yes, sir.

Q And you drew two additional nine-ward plans?

A That is right. That I did.

He requested some different ones to consider.

Q You drew these plans on Mr. Kiepper's request that he would like some more?

A Yes, sir, I did.

Q Did he say how he would like for these to be different from the first three?

A No, sir, he did not.

Q Did he give you any new instructions this time?

A No, sir, he did not–other than to give some variety.

Q Did anybody else give you any instructions between the first and second plans?

A No, sir, they did not.

Q So, that by the end of 1971—or the latter part of the fall of 1971—you had, if I understand correctly, two five-ward plans, a six-ward plan, and three nine-ward plans.

A Yes, sir, I think so.

Q [242] And if I am not mistaken, the three nine-ward plans are the same ward plans that are now called Plans A, B, and C.

A Yes, sir, they are.

Q When did you put—I am sorry. When did you do the compilations of the racial breakdowns in those plans?

And if you did the work for different plans at different times, you can say that, too.

A Well, Mr. Kiepper's request at the time that I was instructed was, first, to do the "one-ninth" or "one-sixth"—or whatever it was.

And then he wanted—after that he requested an ethnic breakdown of each of the wards.

Q When did you do that?

A As the information was carried back to him—to report back, you know—

Q Excuse me.

A As I say, you know, it went back to him in a magic-marker form.

Q We are talking now about March or so of—I am sorry—May—

A I am talking about May of 1971.

Q So, in other words, he did tell you—he did give you an additional instruction after he got those plans, in which he said, "I would like to see what the racial numbers are."?

A [243] Right.

Q And then, I presume, you supplied those numbers fairly quickly.

A My notes, as they were found in the deposition, included the census tracts—and all. And I aggregated that into each ward.

So, it was no problem to go back and put in the ethnic composition in each of those census tracts and come up with—

Q When you say "ethnic composition" you mean "race," don't you?

A I mean "race."

Q So, when you started to draw the October plans that he had requested by way of additional variety, you understood that what he wanted then was not only plans on the total population, but racial breakdowns?

A I was aware that when I finished the division into the number of election districts that I would then do the racial breakdown after that, also, to have a continuity in what he had requested.

Q Did he ask you for anything more?

A To my knowledge, no.

Q Did anyone else ask you for anything more?

I am talking now about, say, up to the end of 1971—in other words, during the period of time in which you had drawn these sets of plans and even a little bit later.

A [244] When you say "anything more," sir, you will have to remember that at the particular time this was going on—and I think Mr. Marsh brought it to your understanding—this really brings it to my mind—I was contacted by some members of the City Council.

Mr. Marsh, as an example, came up and got some demographic data from me.

Maps were—we prepared a map which showed—

Q When you say "Mr. Marsh," do you mean counsel for the Crusaders?

A I mean the Vice Mayor of the City of Richmond.

THE COURT: What do you mean by "demographic data"?

THE WITNESS: Sir, "demographic data" is considered population data which would show the total population.

At that particular time it showed "blacks" and it showed "white" composition.

It was made available to any of the Council members who wanted it—and to practically any of the public who wanted it.

* * *

Q [246] What did you understand Mr. Kiepper to mean when he asked for some more variety?

A Mr. Kiepper was a person who liked to see two or three things to choose from. And this is what he got.

This was basically my understanding of what he wanted.

If you look at the three plans, there are differences.

And for this reason I gave him three that were different. There were different degrees of difference in them—if you can understand that.

Q And the differences would be in areas such as where you started?

A You can choose a course of action in doing a ward plan that will—by saying that this particular thing,

that I want to hold to this as a line—will have a pyramiding effect on the geographic shape of a ward.

The first ward plan, I have to admit I was really inexperienced in actually doing it.

So, he wanted more variety, so I chose some different ways of doing it.

You can see in the ward plan there—[pointing]—that "C" has an elongation.

Q [247] So, you chose different shapes, different ways of drawing the lines.

Did you choose, for example, some different boundary lines—some different barriers to use?

A. Yes, sir.

The first plan I was not as happy with as I would like.

The second two plans, basically, on the north side of the river are the same. And on the south side of the river I was basically trying to split up the annexed area so that the annexed area would have a feeling of being in with the old city.

If you look at the plans, I think, you will find that that is basically the philosophy that is there.

Q What information did you have—or what—I am sorry. What information did you have and from what source that enabled you to—or that you used in trying to decide what was the "neighborhood" or what was the "community of interests"?

A [Pausing.]

Q Or, as you say, a "likeness of area"?

A Historically—I have done this commercially. I am a private cartographer.

Two of the road maps that are used by the oil companies, I do the locations of the names of the geographical areas on them.

* * *

[249] THE CLERK: Defendant Intervenor's Exhibits 17 through 21 marked for identification.

[Intervenor Crusaders' Exhibits Nos. 17 through 21 were marked for identification.]

MR. DERFNER: These are maps which have been–which each counsel has and which have been listed on our list as being labeled "Richmond Maps 1, 2, 3, 4, and 5."

And they are five ward plans that we have submitted at various times on behalf of the Crusaders.

MR. RHYNE: I suppose we have them. But could you give us the numbers, so we can dig them out?

[250] MR. DERFNER: They are Crusaders' Exhibits N, O, P, Q, and R.

MR. VENABLE: Are you introducing them only for the purpose of marking them?

MR. DERFNER: They have been marked.

I am going to find out if Mr. Oslin can identify them.

THE COURT: What are they marked as here?

MR. DERFNER: They are marked here as Defendant's 17, 18, 19, 20, and 21.

MR. RHYNE: Do you want to ask him to identify your exhibits?

MR. DERFNER: I want to know if he can.

[Handing exhibits to the witness.]

THE WITNESS: Thank you, sir.

If I identify them, sir, it may not be by your

specific exhibits. It may be just purely by geographically saying–

BY MR. DERFNER:

Q Well, first–

A –because I haven't seen them before.

Q Pardon me?

A I say, I may not know them by your "Defendant's Exhibits." But it would be by the geographic content here they are commonly referred to as.

[251] MR. RHYNE: The question is:

Have you ever seen these before?

THE WITNESS: Yes, sir, I have.

BY MR. DERFNER:

Q Have you seen–

A I have seen copies like these. But I can't say I have seen these particular ones.

Q Have you seen copies of each of those, as far as you know?

A To the best of my knowledge, I have.

THE COURT: Do you want to open them up and take a look?

THE WITNESS: [Complying with the Court's request.]

Yes, sir. I have seen them.

BY MR. DERFNER:

Q And are you able to–have you satisfied yourself–or are you able to tell from those maps that those are in fact maps of Richmond?

A Yes, sir. They are maps of Richmond.

Q And that they are, each of them, divided into nine segments?

A Yes, sir.

Q And have you also seen the sheets attached to each one that have arithmetic figures on them.

A [252] Yes, sir, I have.

THE COURT: Prior to today?

THE WITNESS: Yes, sir, I have.

BY MR. DERFNER:

Q Have you done any calculations or checking of calculations on those figures?

A Yes, sir, I have.

I have done analytical work on them.

Q Have you done–and have you satisfied yourself that those figures are what they seem to be–in other words, that where it says a "total population" or Ward B on a certain map is "27,000"–whatever it is–that that is in fact what the population is as far as your knowledge of the census records is?

A I can not say from right here. I could take these with me tonight and check them against my calculations. But I can't make it from just a cursory examination.

Q Well, what calculations have you made?

A I have been back over them. And I had miscomings because an earlier exhibit–I do not see it here–in which you footnoted that there was an error in my Ward H.

You had found that error, so I had been back over your calculations to try to find out what that error was. And I think I satisfied myself to make those changes so that I was satisfied.

[253] I do have totals–my own totals–for this.

Your Exhibits Q and R–your footnote at that particular time was that arithmetically they did not add up–the black and the white.

I have been through them and satisfied myself with the figures that will add up to the distribution as it should be to "249,431."

Q In other words, if I understand what you are saying, you have checked the figures that we have claimed are shown on those maps and you have satisfied yourself, I take it, that they are correct with a couple of minor exceptions that you have just mentioned–

A Correct.

* * *

Q [267] Mr. Oslin, I believe you testified early yesterday that the Census Bureau divides the City into a number of segments?

A Yes, sir.

Q How do you mean that?

A Well, I don't have the book before me.

[268] Statistically, a City the size of Richmond, and any large City, is divided into tracts, census tracts.

I don't know if it's characteristic of other cities or not, but it's characteristic of Richmond, that certain census tracts have been aggregated into quadrants of the City.

Show you what I mean here with Plaintiff's Exhibit 3.

MR. DERFNER: Plaintiff's Exhibit 3 is the map showing Census Tracts?

THE WITNESS: Yes, sir; it is.

MR. DERFNER: Very well.

THE WITNESS: By the numbers–it used to be in north, east, south, and west, they have aggregated the different sections or quadrants of the City.

The 200 series here, used to be called the east section of the City; but with the advent of computerization and all, they had to get rid of the alphabetical things. So, it's all numerical.

This 200 is east; this 100 is north; this 300 is central; this 400 is near west end; and 500 is far west end; the 600 series is the southside; and the 700 series is the annexed area.

[269]BY MR. DERFNER:

Q Is there a series labeled the 1,001 series?

A The 1,001 series and the 700 series are identical, but due to the lateness of the Final Decree of the Supreme Court on the Annexation cases, the Census had to go with the County designation.

Cities were to use a three digit classification of census tract. Counties were to use a six digit classification.

We could not, working with the Census Department, guarantee to them that it was going to be City, in time for them to use a three digit–

Q So, in other words, the 700 series is represented on some of these maps by 1,001–

A 1,003 or something of that type.

There are correlations between it. We have had numerous correspondence on the initial drafting of this.

We have attempted to use what they said was going to be used, and they ended up using County designations.

JUDGE MARGOLIS: What do the numbers stand for?

THE WITNESS: The numbers are just a geographic identifier for the census tract.

[270] The census tract started back in Richmond in the early '30's and it was to be a homogeneous area in which it would enumerate the population as a small geographic area.

So that, a City the size of Richmond, or anyplace in the country now that is very large, that you would have statistical units.

You have to realize that government is not the only user of census data; churches, private people, commerce and everything. So, they are always aggregating data.

Commerce would be studying a trade area of a particular commercial venture, so they would aggregate these.

The application of one particular individual may not be the same as the others but they were to be around 4,000 persons in criteria and that would be somewhat homogeneous.

JUDGE MARGOLIS: What is the difference between a 300 and a 400, for example?

THE WITNESS: In the 300, you have 301, 302 as census tracts. I think from 301 to 306.

The 200 series is just a different section of [271] town.

As I said, the 300 series covers the central portions of Richmond, and runs from 301 to 306.

The eastern portion of Richmond, quadrant wise, is the 200 series and runs from 201, and if memory serves me, to 212.

There are 12 census tracts in the 200 series and 6 census tracts in the 300 series.

It's just a further breakdown to allow demographers and all, chances of comparison of circuits.

JUDGE MARGOLIS: All right.

Thank you.

BY MR. DERFNER:

Q This was basically your starting point, as I understand it?

A No, sir; not basically my starting point.

This was how I looked at the City in its beginning.

In other words, you just don't jump in head first, you've got to do some looking. And, I had arrogation quadrant wise, as well as individually, for the City.

So when I looked at Church Hill and saw I had 24,000 people, I knew what I had to do. I had to bisect [272] that.

Q What I'm trying to get at is when you say you saw the census tract divisions and divided the City quadrant wise, are you saying that by looking at these 7 divisions, that you saw what might—not necessarily be a starting point, but a way of conceiving the City is broken down into several parts?

A Yes, sir.

This was done much before my time, and so I looked at that and an aggregated population and could see that the rationale of it was behind what had been done much previous, to my way of thinking.

Q I see.

So, you were guided in a sense by what you say is the logical rationale of this division that had already been made?

A To a certain extent, I was.

Q Now, you spoke of trying to keep similar neighborhoods together, I take it?

A Yes, sir; I did.

Q How did you go about defining what was a neighborhood?

A Well, let's go back to my rapport with [273] Your Honor here a minute ago, the census tract, and the initial conception of it was to be neighborhood, so that was the beginning of it.

There has been changes over the years, so I was aware of some of those changes. I'm not an expert in sociology but I do—worked with it enough that I have somewhat a feel for it. So that, I was able to use my background for census data in help define a neighborhood.

A neighborhood is a very containable definition. It's a sense of the people who live there.

My definition of a neighborhood may not coincide exactly with another person's definition of a neighborhood.

Q You said it's a sense of the people who live there, you mean that to a certain extent it's subjective, depending on what the people in the neighborhoods, themselves, think about who are their neighbors?

A I would say yes.

Q And, what information, in trying to decide where these subjective boundaries tend to fall?

A One of the biggest things that you can use when you use this, is the perimeter streets.

Very seldom, is a neighborhood bisected by a [274] major street, though it will have some type of barrier. It could be industrial; it could be a park; it could be a major artery; but it usually flows and has a way of operating.

In other words, it will probably have a school in it. It will probably have small commercial activity in it

in which those people funnel to as a convenience.

Q How big could a neighborhood be?

A I would say a neighborhood could vary from probably two or three hundred homes, probably up to a thousand homes; no problem.

Once you get above that, you get into the community standard, which then becomes a collection of neighborhoods.

Q So, a neighborhood, if I can translate your number of homes into people, two or three hundred homes, I take it, would be in the neighborhood of anywhere from six to eight hundred people; and a thousand homes would be in the neighborhood of perhaps 2,000, 3,000 people?

A Right.

Q So that a neighborhood might include—would ordinarily include, I think you're saying, something in the neighborhood of one to three thousand people?

A [275] Right, I would say.

Q So there would be about how many neighborhoods in Richmond?

A I would not venture to guess how many definite neighborhoods that there would be in the City.

Q It could be a hundred or more?

A It could be a hundred.

Q Now, in defining neighborhoods, the basic factor you've given me is the perimeter streets.

A Right.

Q Now, are there any other factors that you used?

A As I said, not only perimeter streets, but land uses, such as industrial buffers which will tend to define it, that will enclose that particular area. There could be a park on one side.

Q I see.

In other words, I didn't mean to limit the answer to perimeter of streets, but basically what might be called perimeter are physical boundaries, whether it's a street or a dead-end or a valley or a railroad track?

A It could be the lack of any of those items.

In other words, if you could not get into the area but from one way and it ended in a cul-de-sac type [276] of operation, that would a definitive boundary which would focus people into one, just like in chemistry with the bubble lesson. There's no way to get out but one way.

So, it defines that way.

Q So, you would assume that the people in a given area bounded by certain physical boundaries would consider themselves to be in a neighborhood?

A I would personally consider that. Living in a neighborhood, myself, there's a feeling of that, and I would tend to believe that feeling would be expressed in other neighborhoods as a plan.

Q Now, did you make any survey as to the interest of the people in certain neighborhoods?

A Personally, I did not.

Q Do you know—would you say that you know a great deal, a fair amount about the interests of people in a specific neighborhood in Richmond?

A Towards what, sir?

Q Well, what issues they are concerned with?

What their attitudes are on certain things?

A No, sir; I have not made an attitudinal survey or behavioral survey at all.

Q [277] Are you familiar with any civic associations in Richmond?

A Yes, sir; I am.

I have all of them mapped in my office.

Q Pardon me?

A I have all of them mapped in my office.

Q The civic association boundaries?

A Yes, sir; as the civic associations, individually, have given us that information.

Q About how many are there?

A As far as I can remember it's in the neighborhood of 40 or 50, I think. I'm just trying to recollect how long the list was. I do not have that before me.

Q But, it would be consistent with—I'm sorry, you say 40 or 50?

A That is to the best of my knowledge. I would not like to go any more definitive than that.

Q Are you familiar with the attitudes of the people in any specific association; the particular attitudes of the people in a particular association?

A Only in two in which has come to my attention as part of the drafting of wards.

Q So that basically, what you know about the civic [278] associations is the territory they cover?

A The geographical coverage that they have enumerated to us.

* * *

Q [282] You don't live in Richmond, do you?

A No, sir. I do not.

Q You live in Henrico County?

A That, I do.

* * *

Q [287] So that, inevitably there's no way to draw a ward, let alone 9 wards, that has everybody with similar attitudes, similar interests?

A No, sir.

The City is heterogeneous and is not homogeneous in its entirety. So that, any ward that I know of on a map is a heterogeneous ward, in that it has a mixture of interests in it.

Q And, if you move the line in a given direction, you might increase the similarity at one point, but you might also have to give up some similarity at a different point, is that correct?

A No, sir. It is, and this is the reason that the particular person who is doing it, has to make [288] judgments as to what—there are instances in which you can not include all neighborhoods into a ward, and you have to split some.

And, here I think the question of a localized person doing it, who does have some knowledge, and I don't say I have all the knowledge; but has some knowledge of the City, is in a fairly good position to make that judgment.

Possibly, it would have been better if we had had a Ward Commission, as we've done in some localities that had inputs from more than one person making the decision.

I don't know whether that was good or bad; but it fell upon me to make those decisions and I made the decisions based upon the best of my knowledge.

Q Without getting help, basically, from anyone, I take it? You say you were a loner yesterday.

A I was alone in this, other than there was some feedback.

You'll have to remember, at this particular time that all of this was transpiring, we were in the midst of

the redistricting of the City of Richmond in the General Assembly, the reapportionment of that.

[289] We–and, I say "we", I assisted some of the members of the General Assembly in doing some drafting.

And, when certain maps hit the paper on that redistricting, there was some heavy feedback from people who knew that I had done that redrafting.

I think a grand example was with Wood Haven Heights, I believe that's the name of it, South Richmond; and the Fan District.

The reapportionment of the General Assembly's Plan, I split those. And, those people came to me personally and raised cain.

But, there are times in which you do have to violate your own conscience. You just try to keep those to a minimum, for your own personal satisfaction.

Q Now, if I understand you correctly, plans were drawn for the General Assembly, would have been a State House Plan or a State Senate Plan?

A State House Plan.

Q And, that would have been–that would have divided Richmond into 5 pieces?

A Yes, sir; it would.

Q Did those plans you drew, have any resemblance to the two 5 Ward Plans that have been introduced here?

A [290] I could not say, right now–before me, that they did or didn't. I think one of them was generally referred to as the one that would be used, and then, of course, the 5 Ward Plan, as I was working with

it at the time, went out the window when they decided to have the General Assembly encompass the whole City.

Q In other words, there were two different plans?

A To the best of my knowledge there were.

Q In other words, when you talk about your conscience and you talk about your own personal satisfaction, I take it what you're saying, is that the thing you really don't want to do is to split up a neighborhood?

A I would not want to split up a neighborhood, personally; but I come back to my question of a one man, one vote, which I feel is heavy restraint with the legal ramifications of presenting the deviation.

Q Well, luckily I take it, the–because neighborhoods are likely to be fairly small and much smaller than the size of the wards you have to draw, there shouldn't be too many instances where you do have to cut a neighborhood?

A There's not a great deal.

Q I think you gave us some examples. You said [291] that you had cut the Fan District at one time?

A In one of the plans I had at that time, and these people were quite anxious to express themselves, especially when the President is in your own office.

Q And, you then, in drawing the later plans, I take it, made some attempt to bring the Fan District closer together?

A I'm more recognized, at least I can tell you that.

Q And, you said there was another district in South Richmond called Wood–

A It's Wood, something or other. It is east of Forest Hills Park, and north of Semmes Avenue is the area.

In one of the earlier plans, I did split that.

The President of the civic association, personally came to me after he had found out that I was the guilty culprit. And, at the office he told me that they were one distinct neighborhood.

Q And, you could take a look on your map of civic associations and see that, by George, you had drawn a line through–

A At that particular time, I did not have a map of the civic associations. This was in the A,B,C, realm.

[292] We had later, at that particular time, hired a social planner who had as one of her assignments, was to build a mechanism for working with citizen participation; and that was her first chore, was to map all of the civic associations.

Q When did she do that?

A That has been, I would say, since '72.

I couldn't give you a definite date on it.

* * *

Q [300] Have you drawn any plans since Plan D?

A Nothing except the revision, as suggested by [301] the Justice Department, in one ward map of the City of Richmond, April 25th.

Q And you were basically instructed how to draw that map?

A I was instructed through Mr. Mattox who voiced the criteria that the Justice Department said they would like changed.

There were particular things that they looked for and, of course, in a Ward map when you change it, it has a domino effect. You can't do it in a vacuum.

If you move a thousand people from one place, you've got to take a thousand from another.

So, then I made those changes, and turned them over to Mr. Mattox, who evidently seeked the approval of the Justice Department.

* * *

[306] FURTHER CROSS EXAMINATION

BY MR. VENABLE:

Q I believe I remember your prior testimony yesterday clearly in which you testified that in drawing these ward plans, racial considerations were not part of your criteria and that you did not identify, or know the racial considerations of the wards until after you completed your rough draft. It that correct, sir?

A In numerical numbers.

Q In numerical numbers, that's what I'm talking about.

JUDGE MARGOLIS: Is this with respect to both plans?

[307] THE WITNESS: That's with respect to all plans, sir.

BY MR. VENABLE:

Q Well, we'll just stick to–well, all plans will be fine.

A All right.

Q And the Ward Plans, themselves, are based on population, total population aren't they?

A Yes, sir; they are.

Q And it's total population that you're concerned under one man, one vote; is it not?

A With the division of 9 equal wards.

Q Yes, sir.

JUDGE MARGOLIS: I didn't hear that.

THE WITNESS: With the division of the City into 9 equal wards, you're working with total population.

BY MR. VENABLE:

Q So, if race was no part of your initial considerations, and if wards were based, that you drew, on total population, you didn't actually break it down into black and white over the age of 18 did you when you drew these ward plans?

It took no part in your consideration in forming [308] the lines? Now, isn't that a true statement?

A Yes, sir; I would say it is.

Q Your Honor, I would move to strike the earlier testimony to which I made objection based on percentages of black and white in the old and new City by over the age of 18 having nothing to do with the scope of his testimony.

Strike it entirely from the record.

By his own testimony, he took no part, whatsoever in the consideration of the development of these Ward Plans.

* * *

Q [318] Now Mr. Oslin, calling your attention to Exhibit 15, which is the revised modified–

A Yes, sir.

Q Can you follow this?

A Yes, sir. I can see it from here.

Q Petersburg Turnpike bisects Ward B, Ward F; does it not, sir?

A Yes, sir; it does.

Q The Richmond Metropolitan Authority Powhite Expressway bisects D, comes up between A and E, bisects a portion of A and a portion of B; does it not, sir?

A No, sir; it does not.

Q It does not bisect A?

A No, sir; it does not.

Q It does not come up the railroad track, alongside Hamilton Street and North Thompson?

A No, sir; it does not.

Q The spur from the Richmond Metropolitan Associate Authority which connects with 64, now am I being accurate enough?

A No, sir; you are not.

It's I- 95, sir.

Q [319] I-95?

A Yes, sir.

Q All right.

It comes up then to–

A Carcy Street.

Q Carey Street.

And then, an automobile traveling on that road would continue north would it not?

A Yes, sir; it would.

Q Now we're on what? What's the road?

A Interstate I-95.

Q Fine.

And that goes and bisects A and part of B in connecting up with 95 - 64?

A Yes; it does.

Q Thank you.

Now, the R&A then proceeds from the area of Byrd Park, bisecting E and a portion of F; does it not?

A No, sir; it does not.

Q It is projected to bypass and projected to bisect E and F; does it not?

A It is projected.

Q Thank you, sir.

[320] As a matter of fact, land has been cleared through these two areas to form a corridor, has it not?

A Yes, sir; it has.

Q The line between D and A bisects Westover Hills, too; doesn't it sir?

A The line between D and A?

Q Coming off the Nickel Bridge?

A Part of it does, sir.

Q And, Barton Heights is bisected by G and F; does it not?

A That is a hard neighborhood to say what is bisected in that area.

Q Are you familiar with Barton Heights?

A Yes, sir. I am.

Q Church Hill is bisected by F and G; is it not?

A Yes, sir. I testified to that.

Q And the line– the northern line between E and B runs down Floyd Avenue; does it not–a major portion of it?

A A major portion, yes sir.

Q Floyd Avenue is part of the Fan District isn't it?

A Southern terminus.

Q The southern terminus?

A [321] Yes, sir.

Q But, you've excluded off the southern half of Floyd Avenue with your district line? haven't you?

A Yes, sir.

Q If you had come down the alley would you have excluded any of the Fan?

A A better definitive would probably come down the alley, but there's way to aggregate data that way.

Q Thank you, sir.

Now, when Mayor Bliley approached you about doing Ward Plan D, what instructions did he give you?

That's in February and March?

A Well, he never approached me about Ward Plan D.

Q Did you have a conversation with Mayor Bliley about Ward Plan D?

A I – D, that's the one that I wanted to do.

I went to Mr. Mattox on that.

Q You went to Mr. Mattox?

A Yes, sir.

Mr. Mattox went to the Mayor, not me in particular.

Q So, you never had a conversation with Mr. Bliley about Ward Plan D prior to drawing it?

A I may have had, but my direct inquiry was through [322] the City Attorney.

It's conceivable that I did have some suggestions. I don't remember a direct request.

Q Thank you, Mr. Oslin.

C. Testimony of A. Howe Todd

[347] BY MR. VENABLE:

Q Have you ever been asked to study the Ward Plans as of October 3rd – October 2nd, 1973; the ward plans presented in this case?

A No, sir.

Q You were not familiar with them at that time, were you, sir?

A Not in detail.

Q You had made no detailed study of them, had you sir?

A No sir.

Q So, your testimony at that time was that you knew nothing about them other than what you had read in the paper; is that not correct?

A That is correct.

Q You so testified to those same questions in my office, under oath; did you not?

A Yes, sir.

Q As to that part, Your Honor, Mr. Todd, on discovery deposition, having been listed as a witness of the City since the first days of September, 1973 pursuant to your own order, listed as being called to testify upon the characteristics of the City of Richmond, on which we [348] then had discovery in this Court, for the purpose of deciding what his testimony would be; could not qualify in any respect, personal or expert to testify about the Ward Plan that he is now being called upon to testify.

And, to me, it is a blatant and apparent attempt to frustrate the principles of trial procedure and, particularly, the principles of discovery, which is not the first time this has occurred in this case. to now put this man on and attempt to qualify him as to their Plans.

When we had discovery of this man and attempted to find his feelings about their plan, in which he was not qualified to testify by his own opinions.

And, I just think it would be a travesty of justice to allow the Plaintiffs to now go forward with this man, unqualified, purposely kept unqualified as they try to offer him today at the time of the discovery, to frustrate discovery.

And, I just don't think it's a procedure which ought to be sanctioned by this Court.

And further, on just a technical basis, he has not qualified as a political expert and I will now ask, with the Court's permission; Mr. Todd, you are not qualified [349] to comment on voting patterns in the City of Richmond, are you, sir?

THE WITNESS: I think I am.

BY MR. VENABLE:

Q Are you familiar with the voting patterns of the City of Richmond?

A You mean the precinct voting patterns?

I'm not sure of that term.

JUDGE MARGOLIS: I'm not sure what you mean by voting patterns.

BY MR. VENABLE:

Q All right.

I'll change my question, sir.

Any comments he may have on voting patterns may not be of any degree of expertise, would it?

JUDGE MARGOLIS: I still don't see –

MR. VENABLE: Whatever definition he wants for voting paterns, Your Honor.

JUDGE MARGOLIS: What is voting patterns?

THE WITNESS: I don't know.

I have difficulty with that term.

BY MR. VENABLE:

Q You did not question that term, when asked in [350] my office on October 2nd, did you Mr. Todd.

A I don't remember.

Q Then I will quote page 40.

"Having gone to that point, Mr. Todd, are you

familiar with the voting patterns of the City of Richmond?"

Answer: "No, sir."

Question: "So, any comments you have on voting patterns would not be to any degree of expertise at all?"

Answer: "Not today."

Question: "Not today?"

Answer: "Now you've asked it, I might look it up, but at the moment I really don't know anything about the voting patterns."

A I don't understand the term.

Q You didn't question me about the term at that time did you Mr. Todd?

A I didn't understand it was my purpose to question you.

Q You understand it's your purpose to question today though, don't you Mr. Todd?

A No.

Q How many times –

JUDGE MARGOLIS: Mr. Venable, let's not argue [351] with the witness.

MR. VENABLE: I don't consider it arguing, Your Honor, but I will concede to the Court's wishes.

BY MR. VENABLE:

Q Mr Todd and I have been through this case 3½ years. We have talked about voting patterns in discovery. We have talked about voting patterns –

MR. RHYNE: He's testifying, Your Honor and I think it's gone about as far as it ought to go.

JUDGE MARGOLIS: I think at this moment, just confine your questions to Mr. Todd and leave the argument.

BY MR. VENABLE:

Q Have you ever qualified as a political expert, Mr. Todd?

MR. RHYNE: What do you mean by political expert?

I think this is –

MR. VENABLE: Then, I will rephrase it.

BY MR. VENABLE:

Q Have you ever had any courses of study which would lead to a degree of expertise in voting patterns, voting elections, election laws, the way people vote, any way you want to interpret voting Mr. Todd, are you [352] either educated or qualified by practice and experience to testify as an expert in politics and voting in the City of Richmond?

A As applies to this case, I think so; yes.

I would explain it this way, Your Honor; my expertise is planning, and I believe planning without legislative action is absolutely dead and legislative action without planning is futile.

And, I think that as we proceed to work in subareas of a community to develop plans that is a real relationship between those smaller districts and the kind of legislative relationship that ought to be built in order to allow the Council to follow through with actions to carry out such plans.

So, therefore, in planning, I see a State relationship to legislative action.

Q Have you ever studied politics, other than as a general survey subject, Mr. Todd?

A No, sir.

Q Have you ever been politically active in any political party in the City of Richmond since 1947?

A No, sir.

Q Are you qualified to testify on any given [353] precinct, what the ratio of the vote by party or by race or by any other sub-catagory that you might devise would be at any given year?

MR. RHYNE: Your Honor, I object to this.

I haven't asked him about politics. I have merely asked him to apply this community of interest criteria of his to the various wards. I don't see what the political process has to do with the expertise of this witness.

JUDGE MARGOLIS: I'll overrule your objection, Mr. Rhyne.

BY MR. VENABLE:

Q So, your answer is no, Mr. Todd?

A Yes, my answer is no.

Q As a matter of fact, at no given time can you break down into political subdivisions by party, or any other subdivision which you wish to classify by precinct, as applied to cencus tracts on this map or any other map for voting –

Your Honor, I would ask that if Counsel wish to confer that they don't do it with one Counsel standing to my left and another Counsel yelling to him across the table.

[354] MR. RHYNE: Well, I can't sit down in my chair because Vice-Chairman of the City Council Marsh is sitting –

MR. MARSH: You certainly can, sir.

I'll move my chair around.

JUDGE MARGOLIS: I think we're all set now.

MR. VENABLE: Would you please read the last question back, please?

(Whereupon, the reporter read back from the record.)

BY MR. VENABLE:

Q Now Mr. Todd, it's also true that you do not know by precinct or any other subdivision in the City of Richmond, the particular issues in each and every election which effect the voting patterns and the way those people vote in all the areas of the City of Richmond, do you?

You've never made that study?

In the 1970 elections, for instance, if I were just to randomly point to an area on that map, you could not, with definitive expertise, tell me what the issues were most important in those peoples minds in that particular election and how the vote reflected those concerned, could you?

[355] MR. RHYNE: Your Honor, I object to these questions as having nothing to do with what this witness is to testify about.

JUDGE MARGOLIS: I'll overrule it.

THE WITNESS: No, sir. I don't think I could say in the 1970 elections what the citizens felt to be a big issue.

BY MR. VENABLE:

Q Once again, Mr. Todd, as of October 2nd, 1973, when you came to my office for discovery deposition in this case, had you been informed that you would be expected to testify about plans, ward plans prepared by the City of Washington, D.C. where you are today in this trial?

A I had been informed that I was to be a part of the trial.

JUDGE MARGOLIS: What?

I can't –

THE WITNESS: That I was to participate in a trial, yes, sir..

BY MR. VENABLE:

Q But, no one at that time, had intimated to you that you would be testifying about the Ward Plans, did they?

A [356] Well, the trial was about the Ward Plans, I thought, so I assumed that I would be testifying about the Ward Plans. I thought that's what the trial was about.

Q Question, page 6, "Has anyone intimated that you would be testifying about these Ward Plans in Washington?"

Answer: "No, sir."

Does that refresh your memory?

A I can't say that I didn't say that. I assumed that I was to be in a trial.

You asked me if I remember whether I had studied the plans –

Q Would you like to see your testimony in this case, in my office on October 2nd, surrounding those questions, Mr. Todd and see if it refreshes your memory?

A It might help.

Q May I approach the witness, Your Honor?

JUDGE MARGOLIS: Yes.

(Counsel hands the document to the witness.)

MR. VENABLE: Perhaps you should read them into the record, Mr. Todd, starting at the bottom of the page where we began that line of questioning.

A You first asked me whether I had drawn the plans, and –

[357] MR. RHYNE: What page are you reading from, Mr. Todd?

THE WITNESS: I'm reading from page 5.

His question as to whether I had participated directly or indirectly in the drawing of them, and I said no.

Have you been asked to study the Ward Plans, and I said no.

So, you're not familiar with them at all, and I indicated that I had seen them in the paper and I had seen them but I had not studied them.

Have you been informed that you'd be expected to testify about these plans in Washington, and I said that I hadn't been told precisely that I'll be testifying in Washington.

Q I'm asking him to read from that record, and I believe he's paraphrasing and adding.

A No. I'm reading exactly.

"I haven't been told precisely what I will be discussing in Washington."

Q All right, sir.

A And "Has anyone intimated that you will be testifying about these Ward Plans in Washington? And, I [358] said, "No, sir."

Q Thank you.

Read the next question, pelase, following the answer "no, sir".

A "So, then, your testimony is you don't know anything about them other than what you have read in the paper?"

Q And, your answer, sir?

A My answer was, "At that moment, I had not made a study, at that time."

I've had an opportunity since then to do so.

Q And, you have discussed your testimony pursuant to that subsequent study with Counsel for the City in this case, have you not?

A I have met with the attorney's over the past weekend, as I recall and the week before.

Q Your Honor, I think that says it. I make my argument now, on my voir dire.

I'm sure the Crusade voir dire will go into other areas and other arguments.

My first and foremost argument is this, Your Honor, that there has been a consistent pattern by the Plaintiff City of Richmond to introduce testimony in this case, [359] either by way of exhibit, late filing of papers on the day we meet, by way of questions beyond the stated scope of the testimony of witnesses to introduce evidence that we would not have had the opportunity to discover, or having had the opportunity to call witnesses to rebut.

That this is just another, and even more blatant case, of the City of Richmond coming to deposition with the witness that they knew was going to testify in a particular area, not discussing it with that witness in that area, nor telling him to prepare for it so at the time of deposition we would be prevented and precluded from going into any definitive detail in that area, and then later at trial, attempting to go into an area which we have not had an opportunity to discover, with an individual that had not been previously listed as a witness for that area, nor is an expert for that area; which to me, is absolutely unconscionable and should not be allowed by this Court in any respect to come into testimony.

Further, in my objection, I think we have shown conclusively that Mr. Todd has never studied politics; has never taken any special training in politics or political questions; is not able to look at the City of [360] Richmond and in any way break down voting patterns in any way he wants to define it, on issues or etcetera, on any given subdivision in the City of Richmond, not even able to point to an area and say what issues are important to those people and how their vote reflected it; and such, absolutely can not qualify as an expert in question in political considerations or plans.

He not only does not qualify on voir dire, but himself, on page 40 and again on page 49, made it clear that he was not qualified to comment on voting patterns and was not an expert, had no expertise in that fashion.

And so, for our prime objection being the first, and our secondary objection being the second, we strenously object ot this line of questioning.

And, if the Court would turn to the list of witnesses presented by the Plaintiff City, in the areas in which they were going to call to testify, it would search in vain, even with this updated last minute list of witnesses, which was presented on the October date that we originally petitioned that we were going to be in the trial the last time, when we were last here before the Court.

[361] It will find that even in that list of witnesses and testimony, which we did not exceed to, and think it's highly improper; it still – you would have to search in vane for any suggestion that this man was going to go into this kind of testimony or they

were going to attempt to use him to get this kind of evidence into the Court.

And, we strenously object to it.

* * *

Q [505] If your aim was to cure the problem created by those 47,000 people, as they're effective in voting; that's all we're talking about is voting, then the purest cure is to get rid of people that caused the problem in the first place.

Correct?

A No, sir.

Q [506] I call your attention to the day you spent in my office.

MR. RHYNE: Let him explain his answer. He wanted to –

JUDGE MARGOLIS: Is there something else you wanted to say?

THE WITNESS: I can explain my "no, sir".

I think he's going to say that I said something different at the deposition.

JUDGE MARGOLIS: Well, let's not anticipate what he's going to say.

You just answer the questions.

BY MR. VENABLE:

Q I call attention to your testimony of October 2nd, 1973 in my office, page 90, in which I asked you exactly the same question, word for word as I've just phrased it.

Answer: "But there are other factors."

Question: "I'm talking about voting only."

Answer: "Voting only, maybe so; I really hated to admit that."

Do you remember making that statement?

MR. RHYNE: What page are you on?

[507] MR. VENABLE: Page 90.

MR. RHYNE: Well, just ahead of that is what I'm concerned about.

MR. VENABLE: Your Honor, before he reads it and educates his witness, I'd like to have him answer the question.

MR. RHYNE: No, no. Now, wait a minute.

Your Honor, this is an unfair question, because just ahead of that, "But there are other factors..".

You see, –

MR. VENABLE: I read that, Your Honor.

I read the whole thing.

"But there are other factors."

Question: "But I'm talking about voting only."

Answer: "Voting only, maybe so, I really hated to admit that."

* * *

Q [508] I'm sure you would, except I'm not asking you for your explanation.

JUDGE MARGOLIS: I'd like to hear it.

MR. VENABLE: And, I'm sure the Court would.

THE WITNESS: Well, I didn't realize this and I feel that there's a great fear of what I might have done or learned, or trained myself since the deposition; and the one thing that I have learned, Your Honor, frankly relates to this question, and this is all that I've learned since the deposition; and that is that the voting age population did not have a majority of people –

MR. VENABLE: Your Honor, I object.

There's not been laid a sound basis and founda-

tion. It's not responsive to my question and you must lay a foundation for that.

He's talking about statistics that does not have any basis, and certainly can not be related as a responsive answer to my question.

MR. RHYNE: He's explaining his change in his answer to your question. He has a right to do that.

JUDGE MARGOLIS: I'll permit the answer.

THE WITNESS: I thought the whole issue was on the question of how much voting potential, existing [509] prior to annexation, and the fact that the annexation was supposed to have illusions of black power, of the voting power, the voting strength of the City.

And, I, at the time of the deposition was thinking of that magic percentage, which was the total population percentage of 51 percent.

And the ward plans that I mentioned at the deposition, of what I thought was perfectly fair, was 4 black and 4 white and a swinging ward, tending to black. And that, mathmatically, was certainly as much as a 51 percent total black population whould have normally required.

Since the deposition, however, the additional fact that I have found that makes me want to change my answer to that question is that, in fact, the voting age population, instead of being as high as 51 percent before annexation, it was, in fact, only 45 percent.

And, with an at-large election, it would be a long time, I believe, before blacks would have any potential power if you assume all blacks vote black and all whites vote white, which I don't assume; and I don't like to think about; but if that's the assumption that [510]

everybody's talking about here, then it seems to me that my answer was in error.

With that fact, I could change it. With only 45 percent voting age people, 18 years or older, existing in the old City before any annexation, that it would surely change my opinion on the answer to that question.

And, I didn't know that fact at the time of the deposition.

* * *

Q Do you know, or have any statistics that indicate what percentage of white people who are registered vote, and what percentage of black people who are registered vote?

A No, sir. I don't have of that information.

Q Then faced with – even assuming, for the sake of argument that the 45 percent voting age population was a correct figure, even assuming that, unless you knew what percentage of black people who are able to vote, voted, as opposed to what percentage of white poeple voted, voted; you wouldn't have any way to know the significance of that 45 percent at all, would you?

A [511] Based on the assumptions that I used at the deposition, and I used it in Court today, assuming that blacks vote black and whites vote white, which is what we've been talking about, then –

Q You are assuming that all black people that are qualified and able to vote, vote; and all white people who are qualified and able to vote, vote?

Is that your assumption?

A On the 45 percent; yes, sir.

Q Do you believe as a matter of fact that 100 percent of the people vote?

A That what?

Q That 100 percent of the people who are of age, vote?

A No.

Q So, is it not also – would it not also change your opinion if 90 percent of the black people who could vote, voted, and only 50 percent of the white people who could vote, went to the polls?

It would make a difference wouldn't it?

MR. RHYNE: This is so speculative, Your Honor.

MR. VENABLE: He's the one who's speculating, Your Honor, and I'm trying to point out how speculating [512] his figuring is.

MR. RHYNE: He's talking about 90 percent and 40 percent, and he's talking about actual facts.

JUDGE MARGOLIS: I'll overrule your objection. He's an expert, so let him testify.

BY MR. VENABLE:

Q It would make a difference wouldn't it?

A Yes. None of the whites vote and all of the blacks vote, it would make a difference; but that's not –

Q Switch it back around the other way, wouldn't it?

A Yes, sir; but those figures are extremes. Although I don't know the exact percentages and –

Q You don't know, do you?

And, you're not an expert qualified to –

JUDGE MARGOLIS: Let him finish.

THE WITNESS: On the, 90 percent of the blacks

vote, on the contrary, the registration is probably lower.

BY MR. VENABLE:

Q Do you know what it is?

Have you ever inquired to see any statistics?

A I've seen the percentages in the past, but I can't quote you statistics.

Q [513] You've seen the percentages of people that are registered to vote?

A I have.

Q How many black and how many white are registered to vote?

A No, I think that's total population.

Q Total population.

A But nothing like 90 percent.

Q So, you have no idea what percentage of the black community is even registered, do you?

A No, sir.

Q And, you have no idea of what percentage of those registered in the black community vote, do you?

A No, sir.

Q Nor do you have a corresponding knowledge about the white vote, do you?

A No.

Q I don't have any further questions, Your Honor.

JUDGE MARGOLIS: Mr. Rhyne?

MR. RHYNE: We have no redirect of this witness.

* * *

A [722] I think that the calculations that were made included both – minority numbers of the blacks and whites.

Q But this disenfrachisement figure is one of the criteria that you put into your assessment of the ward plans, is that correct?

A It was sort of an after – yes, I guess it was one of the criteria. It was one of the things –

Q Was it a –

A It was a fact considered, really, after reaching a sort of conclusion of the wards.

* * *

D. Testimony of Henry L. Marsh, III

Q [574] Mr. Marsh, will you state your full name for the record, please.

A Henry L. Marsh, III.

Q And where do you reside, Mr. Marsh?

A 3211 Q Street, Richmond, Virginia.

Q How long have you been a resident of Richmond?

A In one sense, all my life, thirty-nine years.

[575] I did leave Richmond on two occasions.

Q When were they?

A When I was in elementary school, from the ages of five to eleven, when I attended school in a county near Richmond, about seventy miles from Richmond.

Again, when I attended law school here in Washington and went in the service for six months and worked in Washington for about a year.

Q Where did you go to law school?

A Howard University Law School.

Q Other than that time, you resided in Richmond all your life?

A Yes, sir.

Q And what is your occupation?

A I am a lawyer.

Q What type of practice are you in?

A I am in a law firm with the general practice of law.

Approximately forty to fifty percent of the firm's practice involves civil rights. Approximately eighty to ninety percent of my activities involve civil rights.

Q In the course of your travels, do you travel to other cities other than Richmond, within the Commonwealth of Virginia?

A Yes, I have handled litigation, school desegregation litigation, within most of the cities of Virginia, and most of the counties.

Q [576] Therefore, you are generally familiar with other cities in Virginia, as well as Richmond?

A Yes, sir.

In evaluating school plans, we have to become familiar with city patterns, transportation patterns.

Q Do you currently hold any elective positions within the city of Richmond?

A Yes, I am a member of the Richmond City Council and I am currently serving as Vice-Mayor.

Q For how long have you been a member of the Richmond City Council?

A Since July of 1966.

Q How many times have you run for Council?

A I have run for Council four times and been elected three times, 1966, 1968, and 1970. In 1972, I

ran, but a week before the election was to be held, the Supreme Court stayed the election. There were four campaigns and three elections.

Q Are you aware of the support which you have received from blacks and from whites within the city of Richmond?

A Yes, generally within the past two elections, I received about ninety-three or ninety-five percent of the black vote and about thirty percent of the white vote.

Q Do you hold any appointive positions in government?

A Yes, I am one of City Council's representatives to the Richmond Regional Planning District Commission for our region.

Q [577] Is that the organization which Mr. Todd testified he once worked for?

A Yes, that represents seven or eight jurisdictions immediately around Richmond and the city of Richmond in the regional government structure.

I have been one of the city's representatives since, I think, July of 1970.

Q Are you currently involved in any other political activities?

A Yes, I have been appointed to several committees by the governor – Criminal Justice Commission, State-wide Commission for the Study of Governmental Problems.

I am also active with the National League of Cities. I am on the Board of Directors of the National League of Cities. That's an organization of all the cities in the country.

I am President-elect, First Vice-president, of the National Black Caucus of Local Elected Officials.

Q What sort of an organization is that?

A That's an arm of the National League of Cities. The black delegates to the League caucus and have their own organization.

They are recognized by the League of Cities and by the United States Conference of Mayors, a national organization of city governments.

The NBC Leo, as we call it, functions within both [578] organizations.

At this year's convention, I probably will be elected president.

Q Would you briefly outline the history of your political activity within the city of Richmond.

A Before getting elected to council, I returned to Richmond in 1961 and became active in numerous community organizations. These included the NAACP, Community Action Programs, Model Cities Program, Urban League, and scores of other organizations.

THE COURT: How long have you been Vice-mayor?

THE WITNESS: Since 1970, Your Honor.

BY MR. PARKER:

Q As a member of Council for seven years and in the course of your political activities before being elected to Council, are you familiar, or did you become familiar with the neighborhoods of the city of Richmond?

A I would think so.

We campaign at large and we have to go into the various communities to campaign.

We have various zoning matters and other matters coming up from all areas of the city.

Q What are the factors which create neighborhoods?

A In my mind, a neighborhood is a geographical area created, as I think Mr. Todd indicated, by historical development [579] and other factors.

They are created by patterns of change occurring by governmental action or otherwise.

A neighborhood is a group of people living in a certain area.

The factors which create them are just historical development and governmental action and private action.

Q You said something about change.

Are neighborhoods permanent?

A No, neighborhoods change.

This is especially true in Richmond, where complete areas are redeveloped. In other areas, rehabilitation occurs.

Highways and other public projects will eliminate a particular neighborhood.

A neighborhood could be a small group of people in an area of a half a block or in a large area of a square mile or so.

Q Well, there is not a definite amount of people who live in a neighborhood?

A I don't think so.

I think a neighborhood could vary on, really, the eye of the beholder and what he uses to determine what he's looking for.

Q In your eye, approximately how many neighborhoods do you think there are in Richmond?

A Without having made a study, I would say at least [580] there are at least three or four hundred.

There are certain areas cut off from other areas, which, in my opinion, are neighborhoods because they are cut off.

Q Are you familiar with the civic associations in the city of Richmond?

A Yes, I would think so.

Q Do you consider civic associations to be the appropriate vehicles for reflecting the sentiments of neighborhoods?

A No, not really.

I think in certain instances and on certain issues, where the interests of all the people in the neighborhood are unified, a civic association can represent the interest of the neighborhood; in many instances, they do not.

This is true for several reasons.

One, only a small percentage of the people living in a given area participate in a civic association. My experience has been that most of the people in a given area do not participate.

On a particular issue, certain people in a particular neighborhood or community would be on opposing sides; the next week, they would be together. We've had situations where civic associations have been split right down the middle.

I think for the purpose for which they were set up and for what they were supposed to do, they do a pretty good job, generally.

[581] To answer your questions specifically, the true sentiment of a neighborhood or any particular

area. On some occasions, they might reflect the sentiment, not on all occasions.

Q We have heard a lot about communities of interest. What, in your mind, is a community of interest?

A When a group of people have a common interest, a common goal, a common objective, in my mind, they have a community of interest. This usually relates around a particular issue.

Q Do communities of interest coincide with neighborhoods?

A No, sir, they do not.

A community of interest might be city-wide; it might represent several neighborhoods; it might represent a regional area; it could be along racial lines.

Q How do communities of interest relate to neighborhoods?

A I think on some issues the community of interest might actually coincide with the neighborhood. On other issues, the neighborhood might not have any relevancy at all to the community of interest.

I don't think there is any relationship to the two.

Q You speak of communities of interest in terms of issues.

Does that mean that communities of interest are not as fixed as neighborhoods?

A That's true.

Neighborhoods are fixed, in a sense, because they are there. They change from time to time but they don't change as [582] fast as communities of interest.

When an issue comes along, the people who are excited about it are excited about it until it is resolved.

Sometimes, in a matter of weeks or months, the issue is resolved and that community of interest disappears.

It's my opinion that it's a temporary thing. It can be a community of interest that lasts over a long duration; but it certainly has nothing to do with the neighborhood. That's the point I am trying to make.

Q In dividing Richmond into nine single member elective districts for the purpose of electing city councilmen, what criteria would you use?

A Well, I think equality of population to the extent required by law would be a criteria.

I think race — you are speaking of Richmond, Virginia, now?

Q Yes.

A Race would be a criteria.

And, to the extent possible, protecting the integrity of the neighborhood should be a criteria; but I wouldn't give that as much weight as I would the other two.

Q How many neighborhoods did you say you think there are in Richmond?

A I would say two or three hundred, without making any survey or any count.

Q [583] Why do you think race is important in Richmond?

A This is not just in Richmond. I think it's important in Richmond and everywhere else.

It's important in Richmond because, as I think Mr. Todd nentioned yesterday, I think the purpose of government is to meet the people's needs.

Many of the needs of the people in Richmond relate to race.

The governmental decisions in Richmond relate to race – the kind of education blacks will get, the kind of police protection people in a particular area will get.

I might say that the housing pattern in Richmond is mostly segregated. In large areas of the city, only blacks live or only whites live. There are some fringe or transition areas; but, for most of the city, you don't have that much mixture.

In terms of meeting the needs of the people in any particular area, race becomes important.

Blacks in the city are interested in getting the best possible education. They want education to train them for jobs. It becomes an issue.

It becomes an issue in regard to how much of the government's resources go to education, how much of the government's resources go for police protection for their area, as opposed for other areas.

I think the history of Richmond, as indicated by this [584] record, would indicate that race is, perhaps, the dominant factor in determining the quality of life that people enjoy of a particular race in Richmond.

Q We've heard a lot about physical boundaries in terms of drawing ward lines on a map of Richmond.

You did not list physical boundaries as a criteria for drawing wards.

What is your opinion of the importance of physical boundaries in drawing single member districts for the city of Richmond?

A I don't think they are that important. I think they are neutral.

Q What do you mean by neutral?

A A physical boundary can be important if it relates to a particular area. A physical boundary can

also be unimportant; for example, you can live next to a park and not really be that concerned about it.

In my personal experience, I lived for seven or eight years near a park seven or eight blocks from me and I wasn't really that concerned about the park. I rarely went to the park.

When I moved to the east end of Richmond, Ward G, because I had three young children who like to go to the park to watch the animals, I'm far more interested in the park now than when I lived a few blocks from it. You would assume that because I lived near the park earlier I would be interested in it.

[585] If you had assumed this, you would have been wrong.

What I am saying is that the existence or non-existence of a physical boundary is a neutral thing.

There are regional physical boundaries, there are city-wide physical boundaries which have nothing to do with a particular neighborhood.

I think it's a mistake to assume that because a physical boundary is in an area that the people in that particular area are necessarily interested in the physical boundary. In some cases they are; in some cases they are not. It's a neutral boundary.

It has to become connected with a community of interest before it becomes important.

Q What would you think of a physical boundary such as a street? What would you think of that?

A I don't think that's much of a physical boundary at all.

As a matter of fact, Chamberlain Avenue was referred to in testimony earlier, and I happen to know that on both sides of Chamberlain Avenue we have similar development. It's almost like a carbon copy.

There are rows of apartments.

The people living on both sides of Chamberlain Avenue have far more in common –

I'm looking now at at Exhibit 15, wards B and C.

The line splitting those two wards, Chamberlain Avenue, [586] and on both sides of Chamberlain Avenue you have rows and rows of apartments.

I'm saying that the people on both sides of Chamberlain Avenue have far more in common than people who live within the inner circles of B and C because these are single-family homes.

Their interests are hostile or certainly not synonomous with the interests of the people in these apartments.

If you are going to set up ward lines based on communities of interest, you include people on both sides of Chamberlain Avenue.

As a matter of fact, in that instance, the boundary line – the physical boundary – is something that pulls people together on both sides, rather than divides them.

Q Can you think of any other physical boundaries which pull people together?

A Well, in this case the river, the thing that the City is talking about, is another example of a boundary which doesn't divide people who live on both sides.

Q Why is that?

A If you look at this same Exhibit 15, wards A and D, on both sides of the river are people living along the river front.

The homes above the river bed are similar. They're extremely expensive homes. They have a view of the river and an interest in the river.

[587] Their concern and common interest in the river would be far greater than that of people living in ward A or ward D long distances away from the river.

I think in this instance, if you are talking about communities of interest comprising a ward, It would be far better – I'm not saying I would do a ward that way – but you have people on both sides of the river with a common interest in protecting the river, low pollution, physical features around the river.

Highrises would be a factor as to whether you could see them on the other side.

If an unsightly structure went up, they would be concerned about it.

I don't think, in this instance, the river is, necessarily, a barrier which divides people on both sides.

Q Do you think a councilman living north of the river would have any problem supporting bridges?

There was some testimony as to the problem of traffic across the river.

A We have built seven bridges over the years.

Up until 1970, we had not had any councilman south of the river for fifteen years. We had little or no representation from south of the river.

Those of us who were elected north of the river have represented people south of the river.

[588] We take an oath to represent all of the people to the best of our ability. I do, and I believe all members of the council do that.

I see no problem.

The whole at large system is based on representing people all over the city.

I can't imagine any councilman having any problem representing people because he had a ward split both sides of the river. I think it would be helpful.

Q Why do you say it would be helpful?

A One of the purposes, I think, is to bring people north of the river and south of the river closer together.

I think with a ward straddling the river and a councilman representing people on both sides of the river, this would certainly have a tendency to do that.

This would bring the people on both sides of the river closer together, because if they had political considerations and political decisions to make as a ward, they could come together.

Q If a ward straddled the river, would somebody who lived on one side have to cross the river to vote?

A No, I would be opposed to having a precinct straddling the river for voting purposes. I think that would be inconvenient.

What we are talking about is wards for the purpose of electing representatives.

[589] Certainly, you vote in your precinct; but your councilman represents the area.

I see no problem with electing people; but I wouldn't want to go across the river to vote.

Q You testified that in your races for your campaigns for council, you received different degrees of support from whites and blacks.

I would like to know if you also received different degrees of support from the different parts of the city.

A Yes.

As I indicated, the city is segregated along racial lines, more so than most cities, I would say.

For instance, ward G, where I live, except for a part of the bottom tip of ward G – there's a white enclave on the hill – that ward is almost totally black.

Ward D is almost totally white; ward A is almost totally white.

The support I received in ward G and ward F was around ninety to ninety-five percent. I happen to live in ward G.

The support I received in ward A and ward D was twenty to thirty percent. These are wealthy white areas.

Actually, the number of voters varies: The eastend wards, G and F, are very compact. There are a lot of people over there; but there are not a whole lot of registered voters. The voter registration in those wards is about nine or ten [590] thousand a ward.

In wards A and B and D, the voter registration is about eighteen, nineteen, or twenty thousand people, out of an equal population of approximately twenty-seven thousand.

There is a difference in the character of the neighborhoods. There is a difference in the degree of citizen participation. This is because of economics. People who are economically well-off and own their own homes usually vote better. In Richmond, these are mostly whites.

People who are economically poorer, don't participate as much and don't vote so much. That's why the statistics are that way.

The same thing applies to ward H, which is a mixed ward of whites and blacks. The whites support me over there about twenty or thirty percent; but the voter registration in that ward is higher for whites than for blacks.

* * *

Q For the record, the ward letters you have been referring to, you've been having reference to Plaintiff's Exhibit 15. Is that correct?

A Yes, that's correct.

Q As we've talked about this morning and over the last [591] few days, we've heard a lot about community of interest as a criteria for dividing the city into nine wards.

It addition to not listing physical boundaries as a criteria, I also believe you did not list communities of interest.

Why not?

A That's correct.

I also did not list religion and some of the other factors. There are many that could be listed.

I do not think these matters are important. I don't think they are good criteria for drawing wards for electing councilmen in Richmond or, I would say, in other cities as well.

I think the idea of having a councilman representing a homogeneous group of people is bad, whether it's an economic group or otherwise.

In the first place, that map, Exhibit 15, doesn't do that. If the map had been drawn to include people of similar economic development, they would have put circles or semi-circles from the outer edges. This map doesn't do that very well.

If you have councilmen elected from homogeneous economic groups, only, again, you are going to add to the polarization.

I think there is some advantage in having a mixture in a given ward, so that councilman, as he gets

input from some different people, will not get input from just one kind or one type of people; he will get input from different groups. This helps him when he has to meet with other councilmen from different [592] groups.

Obviously, with as many neighborhoods as you have in Richmond, you're going to have to put a lot together; and the question is which ones are you going to put together.

You can put together any combination you want, depending on what your objective is.

I would not have as an objective getting a community of interest to the extent that you would have people of like interests in a particular ward. This would have councilmen coming together in a polarized – potential for polarization – because their constituency would only be one group, economically; and, therefore, rich would be pitted against poor. I don't think this is the way it ought to be.

I think it is good to have a certain mixture in your consistuency. It helps keep the politician honest; it helps give him information; it helps give him input.

I do not think that would be a good idea. That's why I can make that conclusion.

Q If you were to try to draw wards based on communities of interest, recognizing they are somewhat transitory, I believe you testified, how would you go about doing this?

A In the first place, you would have to have a very accurate survey of interests to determine communities of interest.

You have to find a way to determine the position of people on issues; and you can only do this by taking a careful [593] survey.

Of course, this hasn't been done, as I understand it, in this case; but you would have to do that in order to have any accuracy in terms of what the communities of interest would be.

Secondly, if you took it, it would only be true for that period of time.

Q What do you mean by normally true for that period of time?

A Well, six months later, or a year later, you would have to take another survey. Somebody would come up with an idea of running a highway through or for the city doing something and another group of issues would come along.

Conditions change in neighborhoods.

In Richmond, as in other communities, neighborhoods go through cycles.

These historical neighborhoods that Mr. Tood defined yesterday, when they were set up, the finest people moved in to them, in Richmond, the wealthiest people. As time went by, they moved out and other people moved in.

Neighborhoods go from white to black and they change.

This community of interest thing is very fleeting. If you did it at a given point in time, you would have to do it six months later. You would have to change your wards very often in order to have an accurate ward system based on communtiy of [594] interest.

That's another reason why I don't believe it's a feasible way of doing it.

* * *

MR. RHYNE: Thank you, Your Honor.

At this time, I would like the document I have

handed to the deputy clerk to be marked as Plaintiff's Exhibit Number 20-A.

At this time, I would like to hand a copy of this to His Honor and to other counsel.

* * *

Q [595] I am going to hand you a document that has been marked for identification as Plaintiff's Exhibit No. 20-A.

* * *

[606] I would not press it any further here. I will, if necessary, call the authors of the report

I have no further cross-examination, Your Honor.

THE COURT: Very well.

MR. VENABLES: Your Honor, before we go further with cross-examination, might I make a statement in furtherance of my objection.

THE COURT: He withdrew.

* * *

[609] BY MR. VENABLES:

Q Mr. Marsh, isn't it true that you don't, in fact, know the true registered voters numbers or the actual percentages of white or black of registered voters in the city of Richmond, other than your own estimates?

A If you mean to the precise number, I don't know.

I have a very good idea of the numbers of registered voters in different sections of the city.

As a politician, you really have to know that to run for office.

Q But the actual percentages of black and white are just estimates on your part. That is correct, is it not?

A No, I've seen the actual percentages for the various wards.

Q As prepared by the registrar?

A That's right.

Q Does the registrar prepare black and white percentages on registration; I thought that was prohibited by law, Mr. Marsh.

A No, it is not my understanding that it is prohibited by law.

I'm not saying they're official; but the registrar has ways of determining.

Q I see.

A [610] Those figures are actually in existence for each of the wards.

The figures I gave are substantially accurate.

Q Thank you, sir.

Now, Mr. Marsh, ward plan, Exhibit 15, sitting over there on the wall – how many white wards and how many black wards up on there?

Let me give you my definition of a white ward: A white ward would be one where, in your experience as a politician, a political figure in the city of Richmond, there would be no doubt as to the outcome of an election, should the only issue be white and black.

In other words, a ward which is oriented to the white political point of view.

How many are on that?

A I am not sure I accept that definition.

Q Well, give me your definition.

A If you mean a white ward in the sense that the majority – the person likely to be elected from the ward would either be white or would be sympathetic to "the white point of view in Richmond," I would –

Q I'll accept that definition.

A Then five of those wards are white wards.

Q And which ones are they?

A I, H, D, A and B.

Q [611] Which wards are, assuredly, black wards?

A Again, I'd like to get to the definition.

These are wards where either a black could get elected or a person sympathetic to the viewpoint of blacks in the city.

Q I'll accept that definition.

Accepting that definition, which of those wards would, unquestionably, be black wards?

A I would say C, G, and F.

Q The only ward you haven't mentioned as either being identified as either, assuredly, as white or, assuredly, as black is E.

MR. VENABLES: Your Honor, if I might – I forgot to bring my racial breakdown of that map.

THE COURT: Surely.

[Mr. Venables returns to counsel table to obtain breakdown referred to.]

MR. VENABLES: Thank you.

BY MR. VENABLES:

Q Have you seen City Exhibit 18, Mr. Marsh?

A I believe I have.

Q These are the corrected figures, I believe, of this Exhibit 15.

MR. VENABLES: Could Exhibit 18 be handed to the witness, Your Honor?

THE COURT: Certainly.

[612] [Mr. Parker supplies the witness with a copy of City Exhibit Number 18.]

BY MR. VENABLES:

Q How close in ward E can you come to the percentages of white and black in a voting situation, if

the issue was divided racially?

Why do you say that that's not a white or a black ward?

A These figures are a little misleading. These figures show that 64.6 percent are black. There are some problems with that. Consensus data on which these figures are based indicates that about thirty-six percent of the black families, black population, is under the age of eighteen, and only twenty-five percent of the white population is under the age of eighteen.

These figures would have to be adjusted in terms of people eligible to be registered to vote. This 64.6 figure would be reduced by the appropriate percentage.

I'm not a mathematician.

Q Certainly, I understand.

A As I indicated earlier, the white registration is higher than the black registration.

You would have to reduce that figure even further to get the actual number of people who registered to vote.

A further qualification, before I could make that kind of addition would be the resources required in order to get out to vote – these resources would be in the white community.

[613] The poorer black is at a disadvantage in getting out to vote.

This ward, in my mind, would be contested; that's why I couldn't make the same assertion as in other wards.

Also, there are a lot of diverse communities in this ward.

Q If a ward system were devised that had four black and four white and one swing, as has been

previously testified to in this case, that would, in effect, mean that all of the concentration of the political structure would be concentrated on the swing ward. Is that not ture?

If you had a ward plan that presented four black wards and four white wards and one ward up for grabs, that means that the majority of the concentration of political effort between a black group and a white group would be concentrated within that one ward. Isn't that true?

A As a general statement, I think you can expect that to happen.

Again, that's just a prediction; I don't want you to hold me to that.

Q Oh, no, of course.

When you begin to talk about ward plans, you have to talk somewhat on assumptions and possibilities that don't yet exist.

You are in a vacuum as well as national, international, [614] and economic things of that nature.

But, if you had four white and four black wards and one swing, as far as the racial implications, the struggle between black power and white power, the concentrated would by nature have to be in the swing ward, with relatively little bit in the assured wards.

That would be a generally correct statement, would it not?

A Yes, if you make some assumptions.

Q Well, certainly.

Would it make you more comfortable if I spelled out my assumptions?

A Assuming that the spirit of competition would not develop within these other wards – ward E, for instance, could be highly spirited; and a lot of effort could be devoted there.

Q Certainly.

But I'm asking you about a ward system that has four white wards and four black wards.

The black point of view is going to be in the majority in the black wards. The white point of view is going to be in the majority in the white wards.

We are now looking only on a campaign issue of white and black.

For the political control of the city, the fight would be concentrated in the swing ward, would it not?

A [615] Yes, as a general statement.

Q The City's plan shows as a swing ward, in your opinion, E.

The mayor testified he considered the swing ward to be H.

Would you, for the record, state from Exhibit 18 what the percentages of black and white are in H.

A 59.1 percent white, 40.9 percent black.

Q Is it not true that before the annexation there were fifty-two percent black people and forty-eight percent black people in the city of Richmond?

A Yes, according to the census figures.

Q Is it not also true that after annexation there were forty-two percent black?

A Forty-two and a half percent, according to the census figures.

Q Forty-two and a half percent black.

A Yes.

Q So, we concentrate the struggle for white and black power in that ward.

The blacks have less percentage than they even had at large after the annexation and twelve percent less than they had before annexation. Isn't that true?

A Well, –

Q Under the figures supplied by the City?

A Yes, I think you might have understated your case. [616] I will qualify my answer to that a little bit.

Q Well, first of all, that's a true statement, it it not?

It is reflected in H that forty percent black is two and a half percent under the black percentage of the city after annexation and twelve percent under the percentage before annexation.

A If your math is correct, that's true.

Let me explain again, this figure here of total population does not reflect that blacks comprise that percentage of the people who are eligible to vote in the ward, according to my earlier testimony.

Q As a matter of fact, the voting age population in that ward for blacks is somewhere around 38.5 percent, isn't it?

A I'd say so.

Q So you would be fourteen percent below what the figure was before annexation.

* * *

[617] THE WITNESS: Yes, I would not want to compare that with the fifty-two percent.

* * *

Q Mr. Marsh, as a black citizen in the city of Richmond, as a black politician in the city of

Richmond, would you be satisfied with a ward plan that had three black wards in it?

A No, sir.

Q Would you be satisfied with a ward plan that had only four black wards in it?

A No.

Q How many black wards would you have to have before you would be satisfied with a ward plan?

A Well, –

Q [618] Five?

A I think five would be a satifactory resolution of the issue.

Q If you could not have a ward plan which assured five black wards, would you then favor deannexation?

A Yes, I would.

Q Thank you, sir.

I have no further questions.

THE COURT: Did you testify in Holt I?

THE WITNESS: Yes, sir.

I would like to explain my last answer to the question.

THE COURT: Mr. Venables's or mine?

THE WITNESS: Mr. Venables.

THE COURT: All right.

THE WITNESS: My preference for satisfying the Voting Rights Act would be a ward plan which fairly protected the rights of blacks in the city of Richmond.

I think a ward plan can be devised and has been devised which does that. I would prefer that.

As a solution to the problem, I greatly prefer that over any deannexation or anything else.

This is primarily because I believe the Voting Rights Act would not be satified by permitting – by

the dilution that would occur by deannexation.

I am concerned about some of the effects of deannexation.

[619] THE COURT: What would those effects be. What would be the problems, the economic problems, if deannexation were ordered?

THE WITNESS: I think the problems that the mayor mentioned about losing land.

The City has assumed a certain amount of tax.

Problems would result to the school area.

When you weigh that against that satisfying a violation of constitutional rights, I think that these inconveniences and these other things should be not permitted to overcome the Voting Rights under the Constitution, the Fifteenth Amendment Voting Rights. The Fifteenth Amendment Voting Rights is really sacred, in that the voting process itself is an extremely patient way to promote change.

The voting process assumes that the voting majority will prevail. To a person in a minority, when he opts to participate in the voting process for change, then he is subjecting himself to that.

I think that because of all the dangers in this and the slow process by which change has occurred, it is sacred and should not be tampered with.

In order to protect that, you really have to overcome these disadvantages to the City.

I think that having a territory in the city would not help the City that much, if the priorities of the City are not [620] based properly in satisfying the substance of the Voting Rights Act.

* * *

Q [621] In your opinion, would that plan R assure five black voting wards?

A No, sir, it wouldn't assure it; but it would give a greater opportunity.

The same problems which I mentioned about the other wards would be present here.

Ward E would be in jeopardy; ward H would be in jeopardy.

When you adjust the figures to the reality, it would be quite a struggle; but it ought to, at least, assure a possibility of blacks influencing the candidate being elected to the greater extent.

The political process would have to work there.

The reason a candidate is elected in a ward would have a lot to do with it – his philosophy, too. The effort may [622] be on him.

At least, it would give a far greater opportunity to the other plans – the plan on the map, City's 15, that plan preserves, to quite a majority, the present situation we have now.

* * *

E. Testimony of Melvin W. Burnett

[673] DIRECT EXAMINATION

BY MR. VENABLES:

Q Would you state your name, please.

A Melvin W. Burnett.

Q How do you spell your last name, sir?

A. B-u-r-n-e-t-t.

MR. VENABLES: Your Honor, we offer Mr. Burnett in the same qualifications of expertise in local

* * *

[620] I think that having extra territory, with the priorities fixed as they were in the past, would not be to the interest of the black person.

It would not be consistent with the spirit of the Voting Rights Act.

THE COURT: Thank you.

MR. VENABLES: I have no additional questions.

MR. PARKER: I have a few questions.

REDIRECT EXAMINATION

BY MR. PARKER:

Q Mr. Marsh, you testified just now that there had been a plan prepared which you felt would satisfy the requirements of the Voting Rights Act.

Could you identify that plan?

A One of the Crusade's plans, Q or R.

I would have to look at it. I'm not that familiar with it.

Q I show you Defendant's Exhibit Number 21 for identification.

Is that the plan?

A Yes, this is the plan that I think would, in my opinion, satisfy the Voting Rights Act.

* * *

government as we offered him in the pretrial conference on Monday and as was offered and accepted by the Court in Holt I.

THE COURT: Let's find out who he is first and what his expertise is.

MR. VENABLES: Certainly.

Q BY MR. BENABLES: What is your position and for whom do you work, sir?

A I'm the County Administrator of Chesterfield County.

Q How long have you been the County Administrator of Chesterfield County?

A A few months shy of twenty-five years.

Q Would you describe the geographical boundaries of Chesterfield County.

A It lies, roughly between Richmond and Petersburg and contains four hundred and forty-five square miles.

Q Thank you.

What kind of a county – what type of a county is it?

A Sir, it's –

Q [674] Can you characterize it? Is it predominantly rural? What are its characterizations?

A It used to be an agricultural county. In the last twenty or thirty years, it's become now an industrial county. We are the largest producer of nylon in the world and we have many other kinds of industry there.

Q Do you have densely populated urban areas in the county as well as agricultural areas?

A We have four cities on our boundaries, yes. They are Richmond, Petersburg, Colonial Heights and Hope-

well. We do have dense population areas—somewhat dense. We have Chester and its environs.

Q And what is the form of government in Chesterfield County?

A A Board of Supervisors runs the government. It's what we used to refer to as the Executive Secretary system of government. That was changed by General Assembly last year; it is now called the County Administrator.

Q Is your position that of County Administrator?

A Yes.

Q Do you keep the records of the Board of Supervisors and the minutes and put into effect the directives and orders?

A Well, my duties are, generally, to manage the county. I do this at the pleasure of the Board. I keep the Board's minutes and I meet with the Board at all times.

[675] In short, I'm the agency through which the Board speaks, acts, and carries into execution its desires and its wishes.

Q Have you ever been the managerial executive to oversee and implement a deannexation of the territory over which you had control?

A Well, annexation or deannexation depends, I suppose, on where you are.

In 1970, twenty-three square miles was taken from the county. It was deannexed from the county and added to the city, or annexed to the city. It makes a difference as to where you are at the time.

Be that as it may, I've been through three of these exercises. Two were with Colonial Heights. One was

with the city of Richmond and I might say that one lasted some ten years.

It was my duty at the last annexation to see that the transition of land, records, et cetera, was accomplished with the minimum amount of trouble and problems. I think we accomplished that. I think the City was somewhat surprised to know that we could cooperate to that extent.

Q Mr. Burnett, what is your educational background?

A I have a B.S. degree from the University of Richmond and a Master's Degree in Management from the University of Richmond.

Q And you have been the Executive Secretary, County [676] County Administrator, of Chesterfield County since when?

A 1949.

Q In that capacity, have you served on joint planning commissions with city governments in planning districts and participated in city-county meetings, affairs, and things of that nature?

A Yes, sir, without end.

Q You have been previously qualified as an expert in local government, have you not, sir?

A Yes, I have.

Q In cases other than HOLT I?

A Yes, I have.

THE COURT: Are there any objections as to his qualifications?

MR. DERFNER: None, Your Honor.

MR. BIXLER: We have none for the United States.

THE COURT: I understand you object to his entire testimony; but you don't object to his –

MR. RHYNE: We don't argue with his qualifications. We do feel it is irrelevant and immaterial to this case.

THE COURT: All right.

He is qualified in the area designated.

MR. VENABLES: Thank you, Your Honor.

BY MR. VENABLES:

Q Mr. Burnett, you said you were the agency through which [677] the Board speaks, acts, and carries into execution its desires and wishes.

Are you empowered to speak for the Board of Supervisors of Chesterfield County in this case?

A Yes, I am.

Since 1971, I have been under continuing authority from the Board to represent the county in this case.

MR. VENABLES: A resolution was introduced into evidence, Your Honor, in Holt I relative to this grant of authority and the Board's wishes. It's in evidence in this case as Plaintiff's Exhibit Number 37 in the Holt record.

We would move to make it Defendant-Intervenor Holt Exhibit 2, I believe.

I believe I have one other which was introduced earlier in cross-examination, I believe.

To make it easier to identify, we can leave it as Plaintiff Exhibit 37 because that's what we have written on it in the record.

THE COURT: Do you have a copy of it?

MR. VENABLES: I don't have a copy in front of me, Your Honor. I must have misplaced it.

BY MR. VENABLES:

Q Is that resolution still in full force and effect, Mr. Burnett?

A Yes, it is.

Q [678] Has anything occurred since that resolution or since 1970 which would alter or impair the ability of Chesterfield County to do whatever would be necessary to reassume control and management of the area in question, commonly referred to as the annexed area in the south part of Richmond?

A No, with the exception that the county has grown much stronger financially. We have grown much stronger in the last two years.

I think we are far better capable now than we were two years ago to take over and carry out the government of this area.

Q I believe you previously testified that you are familiar with what is necessary to oversee and control and effectuate a deannexation. That is a correct statement, is it not?

A Yes, having had some experience in this matter, I think I can speak with some authority on that.

Q In particular, you have overseen and directed and managed the deannexation of this exact territory of Chesterfield County to the city of Richmond, did you not?

A The same twenty-three square miles.

Q Are you familiar with the annexed area?

A Having managed it for some twenty-three years, I think I can discuss back yards with most people, yes.

Q We heard some testimony earlier, Mr. Burnett, that there [679] would be some irreparable harm. I believe Mayor Bliley talked about irreparable harm. He

spoke of the irreparable harm a deannexation order would have on the City.

Do you agree with that statement?

A No, I do not agree with that statement at all.

As a matter of fact, the twenty-three square miles that was lost by the County of Chesterfield in 1970 was the same territory, it housed the same people, it houses the same facilities the same tax revenues that the city of Richmond is now fearful of losing.

It follows that we faced the same problems in 1970 that they are trying to avoid now.

The City's position has long been that the sophisticated government of the City is far better capable of taking care of the needs of the people than Chesterfield County.

THE WITNESS: I say to you, Your Honor, that Chesterfield met this deannexation problem and they solved it. Unless the City is willing to admit that we have a better capability and more expertise in this case, it must say they too can solve the problem.

Bear in mind that the county lost some thirty-eight percent of its revenue. This was revenue we had watched grow from year to year. It was revenue that we built our government on. It was revenue that we needed to sustain our government.

Naturally, it was a shock to the county when it was [680] taken away. Thirty-eight percent would shock anybody.

This is not the same case here. We're talking about twenty percent or less of their revenue. This is revenue that they have had for less than three years.

I don't believe that this would be the great impossible task, nor do I think it would ruin the city as

people seem to think it would.

BY MR. VENABLES:

Q In pursuing that line for a moment, Mr. Burnett, you have heard in earlier testimony in this case, in Holt I, the phrase, "unscramble the egg," have you not?

A Yes.

I think that is a totally inappropriate metaphor.

Despite all the self-serving opinions and testimony to the contrary, I believe that unscrambling the egg is not the great impossibility or mind-boggling task that some people would like to have you believe.

It may be that the county is more flexible, adapted to change. It may be that we have just gone through this exercise of deannexation.

If ordered by the Court, it is, I think, an exercise that can be accomplished quite easily and, with reasonable people, in a very short time.

Q Let's talk for a moment about the mechanics of transferring this property from the City back to the county.

[681] Let's just discuss the mechanical problems.

Would you take off on the water system and just go through mechanically what you have to do to transfer this property back or, for that matter, to transfer it in any direction.

A Well, you would have to break the entire problem down into its components.

First, let's talk about water: We would have to know how many connections have been added. We would have to know how many bonds had been paid off. We would have to know what the revenue is.

When all the numbers are ascertained, it all sifts down to a number of dollars. Reasonable people can

get together on the numbers of dollars; it can be negotiated.

The sewer system is the same way. We would have to know how many bonds had been paid off. We would have to know how many sewer lines had been installed and what were the costs.

These are numbers that can be ascertained without too much expense. When you find these numbers, they can be sifted down into numbers of dollars. Reasonable people can negotiate numbers of dollars.

With schools, it's the same way, perhaps. Schools, perhaps, would be our less – the area that would give us less problems because we really have a sophisticated school system in our county.

We have leaders in the team-teaching concept; we are [682] leaders in the open-school concept–open-classroom concept–; biggest Title III program in the state–that's the disadvantaged learners. We have a program for mentally retarded–TMR. We have a huge program.

What I'm saying is that we have a tremendous school system and we are ready now to take over the job.

As to balancing of the equities in the school system, it all sifts down to the dollars. Reasonable people can negotiate the numbers of dollars.

Q Does the county expect to be enriched in any way if a deannexation order is awarded?

A I don't believe the Court would unjustly enrich either side. It certainly would not be at our request.

Q Let's talk about fire and police departments for a moment, Mr. Burnett.

A The fire department is no problem. The City has, I think, completed the second permanent fire station. It built two other temporary fire stations. We could certainly use three at this time and the fourth could be used after we readjust some of our areas of cost. We would have no problem using the fire stations that they've set up. We've just added fifteen new pieces of equipment in the last three years. The latest piece of equipment was a one hundred foot ladder truck, costing over one hundred thousand dollars. We are quite pleased with our fire department and have just added seventeen new firemen.

[683] With these new facilities, I think we could handle the area again. We had it one time; I think we can do it again.

Relative to the police department that you asked about, may I say that we do just like the City does: We pay overtime to certain police officers, until we can train enough people to substantially take over the police duties in the area.

Q Does there exist a waiting list now for the Chesterfield Police Department?

A We have always had a list of people on file, so that we can hire any new police officer at the resignation of an old one or at the creation of a new position. We can always fill these positions quite easily.

Q There does exist a list now?

A Yes.

Q You have not addressed yourself to the question of records keeping–real estate, tax records, things of that nature.

How would you handle that problem?

A In terms of time, this would, perhaps, be the more critical area.

Q Well, let me stop you for just a moment.

As far as water, sewers, fire, police, – garbage we can talk about in a minute – the normal services, how much time we can talk about in a minute – the normal services, how much time would be required by the county, from the date of an order of deannexation until you could assume control and provide full [684] services in those areas?

THE WITNESS: I think we could do it in thirty days, Your Honor.

May I say that we have been in the area for a number of years – two hundred to be exact. We have governed this area. We know what's there.

It's just a case, I think now, of them walking out and for us to follow on their heels.

BY MR. VENABLES:

Q Let's talk about – the only one we haven't talked about in your services is the sanitation – picking up your garbage. Is there any problem in that?

A There is no problem with that.

The county picks up trash once a month.

Garbage collection is done by private sanitary companies. All of them dispose of their trash and garbage in the county's sanitary land fill.

When this area was annexed, the City hired the same men who picked up garbage before to do the same job. He's doing it now.

Q Where is he dumping it?

A In the county's land fill.

Q Do you anticipate any problems with rehiring that same individual if the land comes back to the county?

A No, sir.

Q [685] Let's come back then to the problem of tax records, court records, things of this nature that you say would take a little more time.

A In the transition of 1970, the county went to great expense in presenting to the city of Richmond its utility records, assessment records, in good shape. We had no problems; the City had no problems.

The City was able to take these cards – no problems – and melding them into their computer operation and continuing government of the utilities and assessment property in a normal fashion.

We would hope the City would do the same for us. If they did, we would have no trouble whatsoever.

Q Let me see if I can review in my own mind for the Court:

The water system – you say there's no problem – the county has capacity and capability to serve the area?

A The county not only has the capability, it has the capacity. It probably has a better water supply than the city of Richmond.

Q Could you use the waterlines installed by the City since annexation?

A Yes, sir.

We can use almost every one of them. Some of them might be running the wrong way, that is, decreasing in size the [686] wrong way; but for the most part, we can use them all.

Q How about sewer system?

Can you –

A Sewer system is no problem either.

Most of the lines that the City put in were

installed on plans that the county had developed.

We have no problems at all with the sewer. We can use every foot of sewer lines that they put in.

Q Mr. Burnett, I remember in Holt I there was some testimony relative to the takeover of the fire department. There was a difference in threads.

What is that problem? Could you bring it out to the Court. Talk about it.

A The county uses a national standards thread in its fire hydrants in the fire department. It's recognized – the thread – throughout the nation.

The city of Richmond uses a specialized thread, which is used primarily by the city.

When they annexed this land into the city, they had to change the threads of all of the fire hydrants.

This would be no repudiant job. If they can do it, we can do it.

Q How would you accomplish it?

A Well, in thirty days, we may have a hard time to accomplish it.

[687] There are such things as converters. We could use converters on those fire hydrants that are not changed.

Q Is that what the City did?

A That's what the City did.

Q They used converters on their trucks until they made the change?

A I hope that they did.

Q Mr. Burnett, you obviously went over these very problems with the City when you arrived on price.

How long do you think it would take to sit down with the City, this time, and work out the dollar values of these things?

You did it in two weeks in the annexation, didn't you?

A I think about fifteen or sixteen days. I haven't counted it exactly; but it's in that area.

It would take, I'm sure, from the date of a Court order, at least thirty days. I think we can do it within thirty days, with a Court order.

We can sit down with reasonable people and come up with numbers of dollars.

We're both blessed, I think, with good department heads and people who know the numbers and can readily ascertain the numbers. Most of the work, I think, would probably be done by them.

I think, certainly, we can do it within thirty days.

[688] THE COURT: What problems are you talking about, specifically?

THE WITNESS: Problems of solving the dollar values.

THE COURT: Of what?

THE WITNESS: Utilities, schools, drainage, sidewalks –

BY MR. VENABLES:

Q Does the county expect to get anything free if the deannexation order is presented?

A No, sir, we want to pay an honest dollar for everything we get.

Q Is the county capable, solvent, to do such?

A Decidedly so.

May I point out some of our assets?

Q Certainly.

A We have just sold $18,000,00 in sewer bonds; and we have that money in the bank at fantastic interest.

We have been told by the Water Control Board that we are going to get ten or twelve more millions of dollars if we can fill out the environmental statements.

We have about four or five million dollars in the water fund, which is very well financed.

We have over a million dollars in revenue sharing which is uncommited at this time.

We have 17.7 million authorized in the school bond issue which has not been sold.

[689] Oh, we've borrowed against that about five million dollars.

Our normal bank account runs about twenty million dollars at all times.

I might add that we pay for all of our capital outlays, with the exception of schools and utilities, from our current revenues.

THE COURT: Do you have any estimate as to how much it would cost you to reimburse the city of Richmond?

THE WITNESS: I have no idea, Your Honor.

I know that the cash involved in the last situation was something like seven million dollars in cash. I am sure that they would want more than that because – well, some of this is bonds that they have floated to pay for utilities.

We could assume their bonds, as they did ours. They assumed our bonds in schools, water, and sewer. They merely pay us an amount each month or each six months. When the bonds come due, they pay us their percentage share. There's no problem. We could do the same with them

THE COURT: Thank you.

BY MR. VENABLES:

Q Have you had an opportunity to review the answers to interrogatories filed on behalf of Defendant-Intervenor Holt in this case on the city of Richmond, in reference to what they have built or spent in the area?

A [690] I have, yes.

MR. VENABLES: Your Honor, we move that they be made part of the record and introduced as evidence in this case – interrogatories and answers thereto.

THE COURT: Is there any objection to that?

MR. BIXLER: No, Your Honor.

MR. DERFNER: No, Your Honor.

MR. RHYNE: Your Honor, we have the same objection to this line of testimony, of course, as irrelevant and immaterial.

THE COURT: We will admit the interrogatories and answers thereto, propounded by Holt to the City.

MR. VENABLES: I'll have to go back to my files and pull a set, Your Honor.

THE COURT: Not right now.

MR. VENABLES: I'll also file it with the Court.

THE COURT: I would appreciate it if you would.

MR. VENABLES: Yes, Your Honor.

BY MR. VENABLES:

Q Has the county increased its services in the last three years since you were deannexed?

A Yes, we have.

We have won three national awards; one on the construction of a one hundred-bed nursing home; one on an airport; and the third on a juvenile detention hall. All three of these facilities are designed for the greater comfort of our people.

[691] They are a source of greater income and revenue to the county.

We have doubled the size of our jail.

We have increased the mental health program.

We have improved just about every department in the county.

Not only can we take over the annexed territory, we can, I think, give them much better service now than we could, perhaps, in 1969 when we said goodbye to them.

Q Would you have any difficulty in the administration of the jails, courts, probation offices, mental health programs, welfare programs, and social services were you to suddenly be handed forty-seven to fifty thousand – whatever the population is today in that area?

A No, we have no reservations on that score. We're in good shape in all of those departments.

Q You have heard testimony here today, Mr. Burnett, and the days that we have been here in reference to the loss to the City, on an economic basis, of this area.

I call your attention to the Plaintiff City of Richmond Exhibit Number 16, a colored map sitting on the wall, entitled, "Generalized Existing Land Use – 1971."

Did the city of Richmond satisfy or solve any of its need for vacant land when they got this twenty-three square mile territory?

A [692] The City was supposed to have a really drastic need for open space. They maintained in the court that they needed a great deal of land in which to grow.

The area that they got in the twenty-three square miles – the area you see there in the white – a lot of it is undevelopable. About twenty-five percent of it, you could develop with some economic problems; but about seventy-five percent of that land would be, certainly, not feasible to develop.

Most of it, you will see, is residential. The gray area, I believe, is industrial; and there is very little industrial land there.

Q Did they get any vacant industrial land? If they did, about what percentage did they pick up in available industrial land?

A I don't know the percentage, Mr. Venables. I know the land that is zoned or capable of being zoned for industrial purposes. One is a swamp and one is a large county land fill on which you can't build anything of consequence.

Q So out of the total area designated as vacant, what is the percentage that is even capable of being developed, regardless of how it is developed?

A I would say twenty-five percent of the land in the area was capable –

Q Of the total land, or of the vacant land?

A Of the vacant land.

[693] If you want to run the mathematics through, it would be six and a quarter percent.

Q – of the total land could possibly be developed?

A Yes.

Q In prior testimony, the City has stated in this case that it would suffer an economic loss if it were divested of this property.

Using the City's figures, Mr. Burnett, is this area that they got an economic profit to them now?

A No, sir, it is not.

Q What is the basis of that statement?

A Well, if you go to the Annual Report – the financial report – put out by the auditors, you will find that –

Q This is what auditor?

A The City auditor.

Q You will find that the per capita cost of government is $531 per capita; and if you multiply that by fifty thousand people – and there are more than that in the area now – you will need twenty-six and a half million dollars as a cost of governing the area.

Now, the county received two and three-quarter million dollars in taxes in 1969; the City was said to have doubled that. That would be 5.5 million; but my friends tell me that most of the real estate values went up two and a half times; and the figures in the financial report seem to indicate that it would [694] be a little bit better than two and a half times, which would be 6.8 million or seven million dollars.

The real estate received by the City is about thirty percent of its total revenue; so that if that is true in the annexed area–there is no reason to believe it isn't–you would get about twenty-one million dollars as a total revenue from the annexed area.

We have up here a cost of government, excluding capital outlay, of twenty-six and a half million.

Q Excluding capital outlay?

A Excluding caputal outlay.

If you add, roughly, three million dollars to that, you have twenty-nine and a half million as a total cost of government in the area; and you are still eight and a half million dollars shy of even breaking even.

Q Now, that's your figure on revenue?

A Yes, sir.

Q Has Mr. Kiepper ever testified in this case as to what the revenues in the annexed area were?

A Mr. Kiepper said – in this trial, I believe – that in 1970-71 the City would take in thirteen and a half million.

Q That's much lower than your figure?

A Yes.

And in 1971-72, they would take in fourteen and a half million.

[695] That's about fifteen million dollars off of the break even point.

Q The City has to do some work, which was to create capital improvements, by the annexation trial, does it not?

A Yes, the Court said they had to spend 28.3 million dollars in the annexed area.

Q In how long a period of time?

A Five years.

Q So that would be an additional five or six million dollars a year that they would have to spend on cpital improvements, is that correct?

A If you put them in equal installments, yes.

Q Using the figures supplied by the City in answers to interrogatories and presented in their own publications of budgeting and financial reports, how much have they actually spent in this area in two and a half years?

A In the answers to the interrogatories, they have actually paid out, approximately, seven million dollars in a little over two and a half years.

If they're going to spend 28.3 million, then they must spend over twenty million dollars in less than two and a half years. I just don't believe they are capable of moving that fast.

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III Deposition Testimony

A. Deposition of Dr. William S. Thornton. Discovery deposition taken by Intervenor Holt October 3, 1971.

* * * *

A [42] I am William S. Thornton, 2602 Brook Road, Richmond. I am a podiatrist.

Q And are you politically active, Dr. Thornton, with the Crusade for Voters?

A I am.

Q And you have formerly held a position [43] with that organization as what?

A I was one of the founders of the organization. I was President of the organization from its formation until 1960, I believe, and I served as its Chairman from the time of organization in 1956 until 1970, I think it was.

Q Do you currently hold a post with the Crusade?

A I am only consulting with the Crusade at this time.

* * * *

Q [44] Do you consider yourself a generalized expert on the ward plans versus at-large elections?

A No, I do not.

* * * *

A [46] Well, let me just preface that by saying that we in the Crusade for Voters have, and I personally have continually opposed annexation of any of these areas, I think for as far back as 1961, if I remember correctly. We have opposed any annexation to the City of Richmond. So we are opposed to annexation and we are also opposed to at-large elections.

And I might go further to say that we have opposed at-large elections for the members of the House of Delegates, also.

* * * *

A [52] I am still saying that we are against [53] annexation of that particular area.

Q You are still against the annexation?

A The annexation of that area, but we are also against at large.

Q At large, with or without the area?

A Either way. Either way we are against it.

Q Okay. I am just trying to understand your position.

A We are against it.

Q Now, this polling that you took immediately before coming out in support of a ward plan, which happened in July of this year –

A You must remember that at present, as I told you, I am no longer the Chairman of the Crusade.

Q But you are an adviser and consultant?

A I am a consultant. It could have been that I wasn't at one of those meetings, because I have been out of town a number of times this year.

* * * *

Q [54] Now, tell me, Dr. Thornton, are you authorized to speak now for the Crusade for Voters on their position, not being an officer of that organization?

A [55] Yes.

Q Do you have some form of resolution that authorizes you?

A No.

* * * *

Q [56] The composition of the fifth ward being white, not completely white but essentially white – no transition right now, five and four.

A I would prefer that over what we have now.

Q I am talking about, would you prefer it over de-annexation with at-large election?

A No, I would prefer de-annexation.

Q If you had four all white, four all black and the remaining ward roughly 50-50, with no real population trend racially forecast for five or ten years. Would you prefer that to de-annexation?

A Yes, I would.

Q For the reasons stated prior, about closeness to the people, et cetera?

A Right. Yes.

Q Would you prefer five black wards and four white wards to de-annexation?

A I have no hangups about black and white actually, and in the Crusade we have supported white candidates for a number of positions, for a number of elections.

Q My question was: Would you prefer that to de-annexation?

A I don't have any particular hangup about, [57] you know, the wards being white or black.

Q I understand that. But I am throwing at you five black wards and four white wards, and asking you if you would prefer that to de-annexation?

A I would be delighted with five black wards and four white ones.

Q But would you prefer it? I know you would be delighted, but would you prefer it?

A I would prefer it.

Q And I would assume that your answer would be the same for six wards black, seven wards black, eight wards black, ranging on up the scale?

A Right.

Q Now, coming back to the four white, four black and one in percentage, would you prefer that – we are talking now about a system where that swing ward, I guess that is a good way to describe it, if it were 60 percent white and 40 percent black with no foreseeable population change in composition, would you prefer that to de-annexation?

A Yes, I think I would.

Q At what point would the percentage in that middle ward have to go to white before you would? What point would it have to reach before you would prefer de-annexation?

[58] MR. EDWARDS: (To Mr. Venable) Let me see if I understand you. Does your question say that he is guaranteed four blacks?

MR. VENABLE: Yes.

MR. EDWARDS: And you are dealing now with somebody that is in the middle?

MR. VENABLE: Whether he would prefer de-annexation to five all white and four black.

BY MR. VENABLE: (Continuing)

Q I am trying to figure now, when we get to four and four and have a swing ward, at what percentage would you then prefer de-annexation over the ward system? In what percentage, what racial composition in that swing ward would you then prefer de-annexation?

A Oh, well, let us say for the record about 75 percent white.

Q About 75 percent white? Is there any reason for picking that percentage?

A Well, it wouldn't be a possible chance of a black candidate being elected at that rate, whereas, I think that 60, 40 or 50 numbers, that would play a part in it.

Q Now, Dr. Thornton, is it your belief that the Crusade for Voters represents the only true feeling of

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